

ENGLAND's  
Present Interest  
DISCOVER'D

With  
HONOUR to the PRINCE,  
AND  
SAFETY to the PEOPLE.

In Answer to this One *Question*;

*What is most Fit, Easie and Safe at this Juncture of Affairs  
to be done, for Composing, at least Quieting of Differences;  
Allaying the Heat of Contrary Interests, & making them  
Subservient to the Interest of the Government, and  
Consistent with the Prosperity of the Kingdom?*

Presented and Submitted to the Consideration of  
SUPERIOURS.

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*And Abraham said to Lot, Let there be no Strife between me and thee;  
for we are Brethren, Gen. 13. 8.*

*As ye would that men should do to you, do ye also to them likewise, Luke  
6. 31.*

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Lex est Ratio sine appetitu.

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Printed in the Year 1675.

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## THE INTRODUCTION.

**T**HERE is no *LAW* under Heaven, which hath its Rise from *Nature* or *Grace*, that forbids Men to *Deal Honestly and Plainly* with the greatest Personages in Matters of highest Importance to their Present and Future Good; On the Contrary, the *Dilectates* of both enjoin every Man that Office to his Neighbour, and from *Charity* among private Persons, it becomes a *Duty* indispensible to the Publick: Nor do Worthy Minds think ever the less kindly of Honest and Humble Monitors; and God, he knows, that oft-times *Princes* are Deceived, and *Kingdoms* Languish for Want of them. How far the Posture of our Affairs will justify this *Address*, I shall submit to your Judgment, and the Observation of every intelligent Reader.

Certain it is, that there are few *Kingdoms* in the World more *Divided within themselves*, and whose *Religious Interests* lie more seemingly cross to all Accommodation, then that we live in, which renders the *Magistrate's* Task hard, and giveth him a Difficulty, some think insurmountable.

Your Endeavours for a *Uniformity* have been many; Your *Acts* not a few to Enforce it; but the *Consequence*, whether you intended it or no, through the Barbarous Practices of those that have had their Execution, hath been the Spoiling of several Thousands



of the *Free Inhabitants* of this Kingdom of their Un-  
 forfeited Rights. *Persons* have been flung into Goals,  
*Gates and Trunks* broak open, *Goods distrained*, till a *Stool*  
 hath not been left to sit down on; *Flocks of Cattel* driven,  
 whole *Barns* full of *Corn* seized, *Parents* left without their  
*Children*, *Children* without their *Parents*, both without  
*Subsistence*: But that which aggravates the Cru-  
 elty, is, the *Widdow's Mite* hath not escaped their  
 Hands; they have made her *Cow* the Forfeit of her  
*Conscience*, not leaving her a *Bed* to lie on, nor a  
*Blanket* to cover her: and which is yet more Bar-  
 barous, and helps to make up this *Tragedy*, the  
 poor *Helpless Orphans* *Milk* boiling over the *Fire*, was  
 flung away, and the *Skillet* made part of their *Prize*; that,  
 had not *Nature* in *Neighbours* been stronger then  
*Cruelty* in such *Informers* and *Officers*, to open her  
*Bowels* for their *Relief* and *Subsistence*, they must  
 have utterly perisht. Nor can these inhuman Instru-  
 ments plead *Conscience* or *Duty* to those *Laws* that  
 have been made against *Dissenters*, since their *Actions*  
 have abundantly transcended the severest *Clause* in  
 them; for to see the *Imprison'd* has been *Suspicion* enough  
 for a *Goal*; and to visit the *Sick*, to make a *Conventicle*:  
*Fining* and *Straining* for *Preaching* and being at a *Meeting*,  
 where there hath been neither; and *Fourty* Pound for  
*Twenty*, at pick and choose too, is a *Moderate* *Ad-*  
*vance* with some of them. Others thinking this  
 a *Way* too *Dull* and *Troublesom*, alter the *Que-*  
*stion*, and turn, *Have you met?* which the *Act* in-  
 tends, to, *Will you Swear?* which it intendeth not:  
 so that in some *Places* it hath been sufficient to a  
*Primunire*, that men have had *Estates* to loose; I  
 mean, such men, who through *Tenderneß* refuse the *Oath*,  
 but

but by Principle love the *Allegiance* not less then their Adversaries.

Finding then by Sad Experience, and a long Tract of Time, That the very *Remedies* applyed to cure *Dissension* increase it ; and that the more Vigorously an *Uniformity* is coercively prosecuted, the Wider Breaches grow, the more Inflamed Persons are, and fixt in their Resolutions to stand by their Principles ; which, besides all other Inconveniencies to those that give them Trouble, their very *Sufferings* beget that *Compassion* in the Multitude, which rarely misse of many Friends, and makes a Preparation for not a few *Profelytes* ; so much more Reverend is *Suffering*, then making men to suffer for Religion, even of those that cannot suffer for their Religion, if yet they have any Religion to suffer for. Histories are full of Examples ; The *Persecution* of the *Christian* Religion made it more Illustrious then its Doctrine : Perhaps it will be denyed to *English Dissenters*, that they relie upon so good a Cause, and therefore a Vanity in them to expect that Success. *Arrianism* it self, reputed the foulest *Heresie* by the Church, was by no Artifice of its Party so disseminated, as the severe Opposition of the *Homousians*.

Contests naturally draw Company ; and the Vulgar are justified in their Curiosity, if not Pitty, when they see so many Wiser Men busie themselves to suppress a People, by whom they see no other ill then that for *Non.conformity* in Matters of Religion they bear Indignities patiently.

To be short ; If all the *Interruptions*, *Informations*, *Fines*, *Imprisonments*, *Exiles* and *Blood*, the great Enemy

nemy of Nature; as well as Grace; hath excited man in all Ages to about Matters of Worship from *Cain* and *Abel's* time to ours, could furnish us with sufficient Presidents, that the *Design proposed by the Infligators of so much Severity, was ever answered*; that they have smother'd Opinions, and not Inflamed, but Extinguish'd Contest, it might perhaps at least prudentially give Check to our Expectations, and allay my just Confidence in this Address; But since such Attempts have ever been found *Improsperous*, as well as that they are too Costly, and that they have procured the Judgments of God, the Hatred of Men; to the Sufferers, Misery; to their Countries, Decay of People and Trade; and to their own Consciences an infinite Guilt; I fall to the Question, and then the Solution of it; in which, as I declare, I intend nothing that should in the least abate of that Love, Honour and Service that are due to you; so I beseech you, do me that Justice as to make the fairest Interpretation of my Expressions; for the whole of my Plain and Honest Design is, to offer my Mite for the Increase of your True Honour and my dear Country's Felicity.

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## The QUESTION.

**W***hat is most Fit, Easie and Safe at this juncture of Affairs to be done, for Composing, at least Quieting Differences; for Allaying the Heat of Contrary Interests, and making them Subservient to the Interest of the Government, and Consistent with the Prosperity of the Kingdom?*

## The ANSWER.

- I. An Inviolable and Impartial Maintenance of *English Rights*.
- II. Our Superiours governing themselves upon a *Ballance*, as near as may be, towards the several Religious *Interests*.
- III. A sincere Promotion of General and Practical Religion.

I shall briefly discourse upon these Three Things, and endeavour to prove them a *sufficient*, if not the *only best Answer* that can be given to the Question propounded.

*Englist*

## OF ENGLISH-RIGHT.

**T**Here is no Government in the World but it must either stand upon *Will and Power*; or *Condition and Contract*: The one rules by *Men*; the other by *Laws*. And above all Kingdoms under Heaven it is *England's* Felicity to have her Constitution so impartially Just and Free, as there cannot well be any thing more remote from Arbitrariness, and jealous of preserving her Laws, by which all Right is maintain'd.

These Laws are either *Fundamental*, and so immutable; or more *Superficial* and *Temporary*, and consequently alterable.

By *Superficial Laws* we understand such Acts, Laws or Statutes, as are suited to present Occurrences, and Emergencies of State; and which may as well be abrogated, as they were first made for the Good of the Kingdom: For Instance; Those Statutes that relate to Victuals, Cloaths, Times and Places of Trade, &c. which have ever stood whilst the Reason of them was in Force; but when that Benefit, which once redounded, fell by fresh Accidents, they ended according to that old Maxim, *Cessante ratione legis, cessat lex*.

By *Fundamental Laws* I do not only understand such as immediately spring from *Synteresis*, that Eternal Principle of Truth and Sapience, more or less disseminated through Mankind, which are as the Corner Stones of Humane Structure, the Basis of reasonable Societies, without which all would run into Heaps, and Confusion: namely, *Honeste vivere, alterum non ledere, jus suum cuique tribuere*; that is, To live Honestly, not to Hurt another, and to give every one their Right (Excellent Principles, and common to all Nations: Though that it self were sufficient to our present purpose) But those *Rights* and *Privileges*, which I call *English*, and which are the proper Birth right of *English* men, may be reduced to these Three:

First, *An Ownership, and Undisturbed Possession*: That what they have, is rightly theirs, and no Body's else.

2dly,

2dly, *A Voting of every Law, that is made, whereby that Ownership or Propriety may be maintained.*

3dly, *An Influence upon, and a real Shire in that Judicatory Power that must apply every such Law; which is the Ancient, Necessary and Laudable Use of Juries, if not found among the Britains, to be sure practised by the Saxons, and continued through the Normans to this very day.*

That these have been the Ancient and Undoubted Rights of *English* men, as three great Roots, under whose spacious Branches the *English* People have been wont to shelter themselves against the Storms of Arbitrary Government; I shall endeavour to prove.

### I. *An Ownership and Undisturbed Possession.*

This relates both to Title and Security of *Estate*, and Liberty of *Person*, from the Violence of Arbitrary Power.

'Tis true, the Foot Steps of the *British* Government are very much over-grown by Time: There is scarcely any thing remarkable left us, but what we are beholden to Strangers for; either their own Unskilfulness in Letters, or their Depopulations and Conquests by Invaders, have deprived the World of a particular Story of their Laws and Customs in Peace or War: However, *Cesar*, *Tacit.* in vit. *citius*, and especially *Dion*, say enough to prove their Nature and their Government to be as far from Slavish, as their Breeding and Manners were remote from the Education and greater Skill of the *Romans*. *Beda* and *M. West.* an. 416. l. i. c. 17

The Law of *Property* they observed, and made those Laws that concern'd the Preservation of it.

The *Saxons* brought no Alteration to these two Fundamentals of our *English* Government; for they were a Free People, govern'd by Laws; of which they themselves were the Makers; that is, There was no Law made



- made without the Consent of the People (*de majoribus omnes*) as *Tacitus* observeth of the *Germans* in general. They lost nothing by transporting of themselves hither; and doubtless found a greater Consistency between their Laws, then their Ambition: For the Learned Collector of the *Brittish Councils* tells us, That *Ethelston*, the *Saxon* King, pleading with the People, told them, *Seeing I, according to your Law, allow what is yours, do ye so with me.* Whence Three Things are observable, 1<sup>st</sup>, That something was theirs, that no Body else could dispose of. 2<sup>dly</sup>, That they have *Property* by their own Law; therefore they had a Share in making their own Laws. 3<sup>dly</sup>, That the Law was Umpier between King and People; neither of them ought to infringe; the Law limited them.
- Li. Ina Lam.* This *Ina*, the Great *Saxon* King, confirms; *There is no Great Man*, saith he, *nor any other in the whole Kingdom, that may abolish written Laws.* It was also a great part of the *Saxon* Oath, administred to the Kings at their Entrance upon the Government, *to Maintain and Rule according to the Laws of the Nation.* Their Parliament they called *Micklemote*, or *Wittangemote*; it consisted of King, Lords and People, before the Clergy interwove themselves with the Civil Government. And *Andrew Horn* in his *Mirror of Justice*, tells us, That the Grand Assembly of the Kingdom in the *Saxon* time, was to confer of the Government of God's People, how they might be kept from Sin in quiet, and have Right done them according to the Customs and Laws.
- Nor did this Law end with the *Saxon* Race: *William* the Conqueror, as he is usually called, quitting all claim by Conquest, gladly stoopt to the Laws observed by the *Saxon* Kings, and so became a King by Leave, valuing a Title by Election before that which is founded in Power only: He therefore at his Coronation made a solemn Covenant to maintain the good, approv'd, and ancient Laws of the Kingdom, and to inhibit all Spoil and unjust Judgment.

And

And this, *Henry* the first, his third Son, amongst others his Titles mentioned in his Charter, to make *Ely* a Bishoprick, calls himself *Son of William the Great*, who by Hereditary Right succeeded King *Edward* (call'd *the Confessor*) in this Kingdom. An ancient Chronicle of *Leichfield* speaks of a Council of Lords that advised *William of Normandy*; To call together all the Nobles and wise Men throughout their Counties of England, that they might set down their own Laws and Customs; which was about the fourth year of his Reign: Which implies, that they had Fundamental Laws, and that he intended their Confirmation, as followeth. And one of the first Laws made by this King, which, as a notable Author saith, may be called the first *Magna Charta* in the Norman Times, by which he reserved to himself nothing of the Free-men of this Kingdom, but their Free Service; in the Conclusion of it, saith, that The Lands of the Inhabitants of this Kingdom were granted to them in Inheritance of the King, and by the Common Council of the whole Kingdom; which Law doth also provide, That they shall hold their Lands and Tenements well or quietly, and in Peace, from all unjust Tax and Tillage; which is further expounded in the Laws of *Henry* the first, ch. 4. That no Tribute or Tax should be taken, but what was due in *Edward the Confessor's* Time. So that the Norman Kings claim no other Right in the Lands and Possessions of any of their Subjects, then according to English Law and Right. And so tender were they of Property in those times, that when Justice it self became importunate in a Case, no Distress could issue without publick Warrant obtained; nor that neither, but upon Three Complaints first made: Nay, when Rape and Plunder was rife, and men seem'd to have no more Right to their own, then they had Power to maintain, even then was this Law sufficient Sanctuary to all Oppressed, by being publickly pleaded at the Bar against all Usurpations, though it were

Spicileg.

Chro. Leichf.

Ll. Gulielm.

c. 55.

Ll. Gulielm.

cap. 42, 45.

under Gloss. 227.

*Camb. Brit.* under the Pretence of their Conqueror's Right itself, as  
*Norf.* by the Case of *Edwin of Sharnbourn* appears.

The like Obligation to maintain this Fundamental Law of Property, with the appendent Rights of the People, was taken by *Rufus*, *Henry the 1st*, *Stephen*, *Henry the 2d*, *Richard the 1st*, *John*, and *Henry the 3d*; which brings me to that Famous Law, called, *Magna Charta*, or *The Great Charter of England*, of which more anon; it being my Design to shew, That nothing of the *Essential Rights* of *English* men was thereby *de novo* granted, as in Civility to King *Henry the third* it is termed; but that they are therein only repeated and confirmed: Wherefore I shall return to antecedent Times to fetch down the remaining *Rights*.

The second part of this first Fundamental is, *Liberty of Person*. The *Saxons* were so tender in the point of *Imprisonment*, that there was little or no use made of it; nor would they so punish their Bond-men, *vinculis coercere rarum est*: In case of Debt or Dammage, the Recovery thereof was either by a Delivery of the just Value in Goods, or upon the Sheriffs Sale of the Goods, in Money; and if that satisfied not, the Land was extended; and when all was gone, they were accustomed to make their last Seizure upon the Party's Arms, and then he was reputed an Undone Man, and cast upon the Charity of his Friends for Subsistence, but his Person never imprison'd for the Debt, no, not in the King's Case:

*Ll. Edw.*

*Ll. Alfr. c. 1.*  
 & 31.

And to the Honour of King *Alfred* be it spoaken, He imprison'd one of his Judges for Imprisoning a Man in that Case. And we find among his Laws this Passage, *Qui immerentem Paganum vinculis constrinxerit, decem solidis noxam sarcito*: That if a Man should imprison a *Pagan*, or *Heathen* unjustly, his Purgation of that Offence should be no less then the Payment of Ten Shillings; a Sum very considerable in those dayes. Nor did the Revolution from *Saxon* to *Norman* drop this Priviledge;  
 for



for besides the general Confirmation of former Rights by *William*, surnamed the *Conqueror*, his Son *Henry* the *1<sup>st</sup>*. *Guilielm.* first, particularly took such Care of continuing this part c. 42, 45, 55. of Property inviolable, that in his Time no Person was to *Ll. Henr. 1* be imprison'd for committing of Mortal Crime it self, cap. 5. unless he were first attainted by the Verdict of Twelve Men.

Thus much for the first of my Three Fundamentals, *Right of Estate*, and *Liberty of Person*; that is to say, *I am no man's Bond-man*, and *what I possess is inviolably mine own*.

2. *A Voting of every Law that is made, whereby that Ownership or Propriety may be maintained.*

That the second Fundamental of our *English* Government was no Inroad upon the Kings of more modern Ages, but extant long before the *great Charter* made in the Reign of *Hen. 3.* even as early as the *Brittains* themselves; and that it continued to the time of *Hen. 3.* I shall prove by several Instances.

*Cesar* in his Commentaries tells us, That it was the *Cas. Comm.* Custom of the *Brittish* Cities to Elect their General; *L. 5, 6.* *Dion.* in vit. and if in War, why not in Peace? *Dion* assures us in *Sever.* the Life of *Severus* the Emperor, That in *Brittain* the People held a Share in Power and Government; which is the modestest Construction his words will bear. And *Tacit.* in vit. *Tacitus* saith, They had a Common Council; and that *Agric. c. 12.* one great Reason of their Overthrow by the *Romans* was, their not Consulting with, and Relying upon their Common Council. Again, Both *Beda* and *Mat. Westminster* tell us, That the *Brittains* summon'd a Synod, chose their Moderator, and expell'd the *Pelagian* Creed: All which supposes popular Assemblies, with Power to order National Affairs. And indeed, the learned Author of the *British* Councils gives some Hints to this Purpose, That they had

had a Common Council, and call'd it, KYFR-Y-THEN.

The Saxons were not inferiour to the Britains in this Point, and Story furnisheth us with more and plainer Proofs. They brought this Liberty along with them, and it was not likely they should loose it, by transporting themselves into a Country where they also found it. Tacitus reports it to have been generally the German Liberty, like unto the *Concio* of the Athenians and Lacedaemonians. They call their Free-men *Frilingi*, and these had Votes in the Making and Executing the general Laws of the Kingdom. In Ethelbert's time, after Austin's Insinuations had made his Followers a Part of the Government, the *Commune Concilium* was *tam Cleri quam Populi*. In Ina's time, *Suasus & instituto Episcoporum, omnium Senatorum & natu majorum sapientum populi*. L. Sax Lam. Alfred after him reform'd the former Laws *consulto sapientum*. Likewise Matters of publick and general Charge, in case of War, &c. we have granted in the Assembly, *Regi, Baronibus & Populo*. And though the Saxon Word properly imports the Meeting of Wise Men, yet all that would come might be present, and interpose their Like or Dislike of the present Proposition, as that of Ina, *in magna servorum Dei frequentia*. Again, *Commune Concilium seniorum & populorum totius regni*, the Common Council of the Elders and People of the whole Kingdom. The Council of Winion, Ann. 855. is said to be in the Presence of the Great Men, *aliorumq; fidelium infinita multitudo*; & an infinite multitude of other faithful People, which was nigh Four Hundred Years before the Great Charter was made.

My last Instance of the Saxon Ages shall be out of the Glossery of the learned English Knight, H. Spelman: The Saxon *Wittangemote* or Parliament (saith he) is a Convention of the Princes, as well Bishops as Magistrates, and the free People of the Kingdom; and that the said *Wittangemote* consulted of the common Safety in Peace and War, and for the Promotion of the common Good. William of Normandy

Tacit. Hist.  
Germ.  
Plat. in vit.  
So'. & Lyr.

Concil. Brit.  
162.

Ll. Sax Lam.  
Cantab. f. 1.  
Ibid. f. 22.

Ll. Ed. Lam.  
Cant. f. 139.

Ll. Sax. Lam.  
p. 1.

Concil. Brit.  
19. Ingulph.

Spelm. Gloss.  
Tit. Gemote,  
f. 261.

Normandy chose rather to rely upon the Peoples Consent, then his own Power to obtain the Kingdom. He swore to them to maintain their old Laws and Priviledges; they to him Obedience for his to governing of them: for, as a certain Author hath it, He bound himself to be Just, that he might be Great; and the People to submit to Justice, that they might be Free. In his Laws, c. 55. We, by the Common Council of the whole Kingdom, have granted the Peoples Lands to them in Inheritance, according to their ANCIENT Laws. Matters of general Charge upon the whole Body of the People, were settled by this grand Council, by the *Commune Concilium*, especially in the Charge of Arms imposed upon the Subject. The Law saith it to have been done by the common Council of the Kingdom. So W. Rufus and Henry the First, were received by the common Consent of the People. And Stephen's Words were, *Ego Stephanus, Dei gratia, Assensu Cleri & Populi in Regno Anglia electus*, &c. I Stephen, by the Grace of God, and Consent of the Clergy and People, chosen King of England, &c. So King John was chosen *tam Cleri quam Populi unanimo consensu & favore*, by the Favour and unanimous Consent of the Clergy and People: And his Queen is said to have been crown'd *de communi consensu & concordia voluntate Archiepiscoporum, Comitum, Baronum, Cleri & Populi totius Regni*, i. e. by the common Assent and unanimous Good Will of the Arch-Bishops, Bishops, Counts, Barons, Clergy and People of the whole Kingdom. King Ed. 1. also desired Money of the *commune Concilium* or Parliament, as they have given in my time, and that of my Progenitors, Kings.

All which shows, that it was Antecedent to the Great Charter, not the Rights therein repeated and confirmed, but the Act it self.

And King John's Resignation of the Crown to the Pope, being question'd upon some Occasion in Edward the 3d's Time, it was agreed upon, that he had no Power to do it without the Consent of the Dukes, Prelates, Barons and Commons.

And as paradoxal as any may please to think it, 'tis the

LI. Gulielm.  
c. 55.

LI. Guliel.  
c. 58.

Spicileg.

W. Malmbs.

Hist. p. 101.

Cart. moder.

foeder. magn.

sigil. ann. 1.

Joh. ex vet.

Reg. in Arch.

Cantuar. Ar.

chiepiscop.

Rot. Cart.

ann. 5.

Joh. Memb. 5

n. 29.

Rot. Par. 24.

Edw. I. n. 22.

Rot. Par. 40.

Ed. 3. n. 78.



the great Interest of a Prince, that the People should have a share in the making of their own Laws; where 'tis otherwise, they are no Kings of Free-men, but Slaves, and those their Enemies for making them so. *Leges nulla alia causa nos tenent, quam quod iudicio populi receptæ sunt*; The Laws (saith Ulpian) do therefore oblige the People, because they are allowed of by their Judgment. And Gratian, in Dec. distinct. 4. *Tum demum humana leges habent vim suam, cum fuerint non modo instituta, sed etiam firmata Approbatione Communitatis*: It is then (saith he) that human Laws have their due Force, when they shall not only be devised, but confirm'd by the Approbation of the People. 1. It makes Men diligent, and encreaseth Trade, which advances the Revenue; for where Men are not free, they will never seek to improve, because they are not sure of what they have. 2. It frees the Prince from the Jealousie and Hate of his People; and consequently, the Troubles and Danger that follow; and makes his Province easie and safe. 3. If any Inconveniency attends the Execution of any Law, the Prince is not to be blam'd; 'tis their own Fault that made, at least consented to it.

I shall now proceed to the third Fundamental, and by plain Evidence prove it to have been a material part of the Government before the Great Charter was enacted.

### 3. The People have an Influence upon, and a great Share in that Judicatory Power. &c.

That it was a British Custom, I will not affirm, but have some Reason to suppose; for if the Saxons had brought it with them, they would also have left it behind them, and in all likelihood there would have been some Footsteps in Saxony of such a Law or Custom which we find not. I will not enter the Lists with any about it; This shall suffice, that we find it early among the Saxons in this Country; and if they, a free People in their own Country, settling themselves here as a new planted Colony, did supply what was defective in their own Government, or add some new Free-

Freedom to themselves, as all Planters are wont to do ; which are as those first and Corner Stones, their Posterity with all Care and Skill are to build upon, that will serve my turn, to prove it a *Fundamental* ; that is, such a *first Principle* in our *English Government*, by the Agreement of the People *diffusively*, that it ought *not to be violated* : I would not be understood of the *Number*, but of the *Way of Tryal* ; that is to say, that *Men were not to be condemned but by the Votes of the Freemen*. *N. Bacon* thinks that *in ruder times the multitude tryed all among themselves* ; and fancies it came from *Gracians*, that determin'd *Contraversies* by the *Suffrage of 34 or the major part of them*. Be it as it will, *Juries* the *Saxons* had ; for in the *Laws of King Etheldred*, about 300 Years before the Entrance of the *Norman Duke*, we find enacted, in *singulis Centuriis, &c.* thus Englished, *Ll. Sax. Lam. ann. 675.* In every Hundred let there be a Court, and let twelve Ancient Free-men, together with the Lord of the Hundred be sworn, that they will not condemn the Innocent, or acquit the Guilty : And so strict were they of those Ages in observing this fundamental *Way of Judicature*, that *Alfred* put one of his Judges to Death for passing Sentence upon a Verdict corruptly obtain'd, upon the Votes of the Jurors, three of twelve being in the Negative : If the Number was so sacred, what was the Constitution it self ? The very same King executed another of his Judges for passing Sentence of Death upon an Ignoramus return'd by the Jury ; and a third for condemning a Man upon an Inquest taken ex officio, whenas the Delinquent had not put himself upon their Tryal. More of his Justice might be mention'd even in this very Case.

There was also a Law made in the time of *Etheldred*, *Ll. Etheld c. 3. Lamb.* when the *Brittains* and *Saxons* began to grow tame to each other, and intercommon amicably, that saith, Let there be Twelve men of Understanding, &c. six English and six Welch, and let them deal Justice, both to English and Welch.

Also in those simpler times, If a Crime extended but to some shameful Pennance, as Pillory or Whipping (the last whereof as usual as it may be with us, was inflicted only upon

*Ll. Inc.*

*Ll. Canut.*

upon their Bond-men) then might the Pennance be reduc'd to a Ransom, according to the Nature of the Fault; but it must be so assent in the Presence of the Judge, and by the Twelve, that is the Jury of Frilingi, or Free-men.

Hitherto Stories tell us of Tryals by Juries, and those to have consisted in general Terms of Free-men, but PER PARES came after, occasion'd by the considerable Saxons, neglecting that Service, and leaving it to the inferior People (who lost the Bench, their ancient Right, because they were not thought Company for a Judge or Sherif) And from the growing Pride of the Dines, who slighted such a Rural Jurisdiction, and despised the Fellowship of the mean Saxon Free-men in publick Service; for the wise Saxon King perceiving the Dangerous Consequence of submitting the Lives and Liberties of the Inferiour (but not less useful People) to the Dictates of any such superb Humour; and on the other hand, of subjecting the Nobler Sort to the Suffrage of the Inferior Rank, with the Advice of his Wirtagenmote provides a third Way, most Equal and Grateful, and by Agreement with Gunthurne the Dane, settled the Law of Peers, or Equals; which is the Envy of Nations, but the famous Priviledge of our English People, one of those three Pillars the Fabrick of this ancient and Free Government stands upon.

Spicil. 197.

Stigand.

This Benefit gets Strength by Time, and is receiv'd by the Norman-Duke and his Successors; and not only confirm'd in the lump of other Priviledges, but in one notable Case for all, that might be brought to prove, that the fundamental Priviledges mention'd in the Great Charter, 9. Hen. 3. were before it. The Story is more at large deliver'd by our Learned Selden; But thus; The Norman Duke having given his half Brother Odo, a large Territory in Kent, with the Earldom; and he taking Advantage at the King's being displeased with the Arch-Bishop of Canterbury, to possess himself of some of the Lands of that See: Landfrank that succeeded the Arch-Bishop, inform'd hereof, petition'd the King for Justice *secundum legem terra*, according to the Law of the Land; upon which the King summon'd a County-Court, the



(17)

the Debate lasted three Dayes before the *Free-men of Kent* in the Presence of *Lords and Bishops*, and others skilful in the Law, and the Judgment passed for the Arch-Bishop  
UPON THE VOTES OF THE FREE-MEN.

By all which it is (I hope) sufficiently and inoffensively manifested, that these three Principles:

1. *English men have individually the alone Right of Possession and Disposition of what they have.*

2. *That they are Parties to the Laws of their Country, for the Maintenance of that great and just Law.*

3. *That they have an Influence upon, and a real Share in the Judicatory Power, that shall apply those Laws made, have been the ancient Rights of the Kingdom, and common Basis of the Government; that which Kings under the several Revolutions have sworn to maintain, and History affords us so many Presidents to confirm; So that the Great Charter made in the 9th of Henry the 3d, was not the Nativity, but Restoration of ancient Priviledges from Captivity; No Grant of New Rights, but a New Grant, or Confirmation rather of Ancient Laws & Liberties, violated by King John, and gain'd by his Successor, at the Expence of a long and bloody War, which shew'd them as resolute to keep, as their Ancestors had been careful to enact those excellent Laws.*

And so I am come to the *Great Charter*, which is comprehensive and repetitious of what I have already been discoursing, and which I shall briefly touch upon with those successive *Statutes* that have been made in Honour and Preservation of it.

I shall rehearse so much of it as falls within the Consideration of the foregoing Matter, which is a great deal in a little; with something of the Formality of *Grant* and *Curse*, that this Age may see, with what *Reverence* and *Circumspection* our Ancestors govern'd themselves in *Confirming* and *Preserving* it.

Henry, by the Grace of God King of England, &c. 9th. Hen. 3.  
To all Arch-Bishops, Earls, Barons, Sheriffs, Pro-

voss Officers, unto all Bailiffs, and our faithful Subjects, who shall see this present Charter, Greeting.  
 ' Know ye, that we, unto the Honour of Almighty  
 ' God, and for the Salvation of the Souls of our Pro-  
 ' genitors, and our Successors, Kings of England,  
 ' to the Advancement of Holy Church, and A-  
 ' mendment of our Realm, of our *meer and free*  
 ' Will have given and granted to all Arch-Bishops,  
 ' &c. and to all *Free-men* of this our Realm, these  
 ' Liberties underwritten, to be holden and kept  
 ' in this our Realm of England for evermore.

Though in Honour to the King, it is said to be out of his *meer and free Will*, yet the Qualification of the Persons, he is said to grant the ensuing Liberties to, shew, that they are Terms of Formality, viz. *To all Free-men of this Realm*; for they must be *free*, because of these Laws and Liberties, since 'twas impossible they could be any Thing but *Slaves* without them; Consequently, this was not an Infranchising, but *confirming* to Free-men their just Privileges. The Words of the Charter are these:

Ch. 14.

' A *Free-man* shall not be amerced for a small  
 ' Fault, but after the Quantity of the Fault; and  
 ' for a great Fault, after the Manner thereof, sa-  
 ' ving to him his Contenements or Freehold: And  
 ' a *Merchant* likewise shall be amerced, saving to  
 ' him his Merchandize; and none of the said A-  
 ' mercements shall be assessed, but by the Oath  
 ' of good and honest Men of the Vicinage.

Ch. 29.

' No *Free-man* shall be taken or *imprison'd*, nor be  
 ' *disseized of his free-hold or Liberties*, or free Cu-  
 ' stoms, or be outlaw'd or exiled, or any other  
 ' wayes destroyed; nor we shall not pass upon him,  
 ' nor condemn him, but by *Lawful Judgment of*  
 his

'his Peers, or by the Law of the Land; we shall  
'sell to no Man, we shall deny, or defer to no  
'Man either Justice or Right.

I stand amazed, how any Man can have the Confidence to say, *These Priviledges were extorted by the Barons Wars*, when the King declares, that what he did herein, was *freely* or that they were *New Priviledges*, when the very Tenour of the Words prove the *contrary*; for *Freehold, Liberties, or Free Customs* are by the Charter it self supposed to be *in the Possession of the Free-men at the making and publishing thereof*. No *Free-man shall be taken or imprison'd*; then he is *free*; this Liberty is his Right. Again, *No Free-man shall be disseized of his Freehold, Liberties, or free Customs*; then certainly he was *in Possession of them*. And that great Father in the Laws of England, Chief Justice Cook in his Proæm to the 2d Part of his *Institutes*, tells us, that *these Laws and Liberties were gather'd and observ'd amongst others in an intire Volumn by King Edward the Con- fesser, confirmed by William, surnamed the Conqueror; which were afterwards ratified by Henry the first; enlarged by Henry the second, in his Constitutions at Clarendon, and after much Contest and Blood spilt between King John and the Barons concerning them, were solemnly established at running-Mead near Stanes; and lastly, brought to their former Station, and publish'd by this King Henry the third, in the 9th Year of his Reign; And though Evil Counsellors would have provoakt him to void his Father's Act and his own, as if the first had been the Effect of Force, the other of Non-Age; yet it so pleased Almighty God, who hath ever been propitious to this Ungrateful Island, that in the 20th Year of his Reign, he did confirm and compleat this Charter, for a perpetual Establishment of Liberty to all free-born English Men and their Heirs forever, ordaining, Quod contravenientes per Dominum Regem cum convicti fuerint, graviter puniantur. i. e. but whosoever should act any Thing contrary to these Laws, upon Conviction should be grievously punished by our Lord the King. And in the 22 Year of his Reign, it was confirmed by the Statute of*

Cook, Pro-  
æm. Instit.  
part. 2.

March,



§ 2. Hen. 3.  
Stat. Marleb.

*Marleb. c. 5.* and so venerable an Esteem have our Ancestors had for this *great Charter* and indispensibly necessary have they thought it to their own and Posterities Felicity, that it hath been above 30 Times ratified, and commanded under great *Penalties*, to be put in Execution.

Here are the 3 *Fundamentals* comprehended & exprest, to have been the Rights and Priviledges of *English Men*.

1. *Ownership*, consisting of Liberty and Property, in that it supposes *English Men* to be *Free*, there's *Liberty*; next, that they *have Freeholds*; there's *Property*.

2. That they have the *Voting of their own Law*; for that was an ancient free Custom, as I have already prov'd; and all such Customs are expressly confirmed by this *great Charter*; Besides, the People help't to make it.

3. An Influence upon, and a real *Share in the Judicatory Power*, in the Execution and Application of Law.

This is a substantial Part, thrice provided for in those sixteen Lines of the great Charter by us rehears'd: 1. *That no Amercement shall be assessed, but by the Oath of good and honest Men of the Vicinage.* 2. *Nor we shall not pass upon him, nor condemn him, but by Lawful Judgment of his Peers.* 3. *Or by the Law of the Land, which is Synonymum, or a Saying of equal Signification with Lawful Judgment of Peers*; for *Law of the Land*, and *Lawful Judgment of Peers*, are the *Proprium quarto modo*, or essential Qualities of these Chapters of our *great Charter*, being communicable, *Omni soli & semper*, to all and every Clause thereof alike. Chief Justice Cook well observes, that *per legem* of § 2. E. 3. *terra*, or by the Law of the Land, imports no more then *Inst. 2. p. 50.* a Tryal by *Proces*, and *Writ original at common Law*, which cannot be without the Lawful Judgment of Equals, or a common Jury; therefore *per legale Judicium parium*, by the Lawful Judgment of Peers, and *per legem terra*, by the Law of the Land, plainly signifie the same Priviledge to the People: So that it is the *Judgment of the Free-men of England*, which gives the Cast, and turns the Scale of *English Justice*.

These Things being so evidently prov'd by long Use and several Laws, to have been the first Principles or Fundamental

Fundamentals to the *English* free Government; I take leave to propose this Question; *May the free People of England be justly disseized of all or any of these fundamental Principles, without their Individual Consent?*

*Ans.* With Submission to better Skill, I conceive, *Not*; for which I shall produce first my *Reasons*; then *Authorities*.

1. Through the *Brittish, Saxon* and *Norman* Times, the People of this Island have been reputed and call'd *Free-men* by *Kings, Parliaments, Records* and *Histories*; and as a *Son* supposes a *Father*, so *Free-men* suppose *Freedom*. This Qualification imports a supream Right, such a Right as beyond which there is none on Earth to disfree them, or deprive them of it; therefore an unalterable fundamental Part of the Government.

2. It can never be thought, that they intrusted any *Legislators* with this Capital Priviledge further then to use their best Skill to secure and maintain it, that is, so far as they were a Part of the *English* Government; they never delegated or empower'd any Men, that *de jure* they could deprive them of that Qualification? and a *Facto ad Jus non valet Argumentum*, for the Question is not, *What May be done?* but *what Ought to be done?* Overseers and Stewards are empower'd, not to alienate, but preserve and improve other Mens Inheritances. *No Owners* deliver their Ship and Goods into any Man's Hands to give away, or run upon a Rock; neither do they consign their Affairs to Agents or Factors without Limitation. All Trusts suppose such a Fundamental Right in them for whom the Trusts are, as is altogether indissolvable by the Trustees. The Trust is the *Liberty* and *Property* of the People; the Limitation is, that it should not be invaded, but inviolably preserved according to the Law of the Land.

3. If *Salus Populi* be *suprema lex*; the Safety of the People the highest Law, as say several of our ancient famous *Lawyers* and *Law-Books*; then since the aforesaid *Rights* are as the Sinnews of this free *Body politique*, or that sovereign Cordial without which this free People must needs consume

consume and pine away into utter Bondage; it follows, they are the highest Law, and therefore ought to be a *Rule* and Limit to all subsequent Legislation.

4. The Estate goes before the Steward, the Foundation before the House, *People* before their *Representatives*, and the Creator before the Creature. The Steward lives by preserving the Estate; the House stands by Reason of its Foundation; the *Representative* depends upon the *People*, and the Creature subsists by the Power of its Creator. Every *Representative* in the World, is as the *Creature of the People*; for the People make them, and to them they owe their Being: Here is no *Transfessentiating* or *Transubstantiating* of Being from People to Representative, no more then there is an absolute transferring of a Title in a *Letter of Attorney*; The very Term *Representative* is enough to the contrary: Wherefore as the House cannot stand without its Foundation, nor the Creature subsist without its Creator; so can there be *No Representative without a People*, nor that *People free*, which all along is intended (as inherent to, and inseparable from the *English People*) *without Freedom*; nor can there be any *Freedom* without something be Fundamental. In short, I would fain know of any Man, how the Branches can cut up the Root of the Tree that bears them? How any *Representative* that is not only a meer *Trust to preserve Fundamentals*, the Peoples Inheritance; but, that is a *Representative*, that makes *Laws*, by Virtue of this Fundamental Law, that *the People hath a Power in Legislation* (the 2d Principle prov'd by me) can have Power to remove or destroy that Fundamental? The *Fundamental* makes the People free, this free *People* make a *Representative*; Can this *Creature* unqualifie its *Creator*? What Spring ever rose higher then its Head? The *Representative* is at best but a true Copy, an *Exemplification*; the free *People* are the *Original*, not cancellable by a *Transcript*: And if that *Fundamental* that gives to the People a Power of *Legislation*, be not annullable by that *Representative*, because it makes it what it is; much less can that *Representative* disseize Men of their *Liberty* and *Property*, the first Great *Fundamental*, that



that is the *Parent* of this other, which intitles to a Share in making *Laws* for the Preservation of the first inviolably. Nor is the *third* other then the necessary Production of the two first, to intercept *Arbitrary Designs*, and make *Power* legal; for where the People have not a *Share in Judgment*, that is, in the Application, as well as making of the Law, the other two are imperfect, open to daily Invasion, should it be our Infelicity to have a violent Prince: for as *Property* is every day expos'd, where those that have it are destitute of *Power to hedge it about by Law-making*; so those that have both, if they have not the Application of the Law, but the Creatures of another Part of the Government, how easily is that Hedge broken down? And indeed, as it is a most just and necessary, as well as ancient and honourable Custom, so it is the *Princes Interest*; for still the People are concern'd in the Inconveniencies with him, and he is freed from the Temptation of doing arbitrary Things, and their Importunities, that might else have some Pretence for such Adresses, as well as from the Mischiefs that might ensue such Actions. It might be enough to say, that here are above 50 Statutes now in Print, beside its venerable Antiquity, that warrant and confirm this *Legale judicium parium suorum*, or the Tryal of *English Men by their Equals*.

But I shall hint at a few Instances: The first is, *The Earl of Lancaster* in the 14th of *Edw. 2.* adjudged to dye without Lawful Tryal of his Peers, and afterwards *Henry Earl of Lancaster* his Brother, was restored: the Reasons given were two; 1. Because the said *Thomas* was not arraign'd and put to Answer; 2. That he was put to Death without Answer, or Lawful Judgment of his Peers. The like Proceedings were in the Case of *John of Gaunt*, p. 39. *coram Rege*. And in the *Earl of Arundel's Case*, *Rot. Parl.* 4 *Edw. 3.* n. 13. And in *Sr. John Alee's Case*, 4 *Edw. 3.* n. 2. Such was the Destruction committed on the *Ld. Hastings* in the Tower of London by *Richard the 3d.* But above all, that Attainder of *Thomas Cromwel, Earl of Essex*, who was attainted of high Treason, as appears *Rot. Parl.* 32. *Hen. 8.* of which saith Chief Justice *Cook*, as I remember, *Let Oblivion take away the Memory of so foul a*

5. Ed. 3. c. 9.

25. Ed. 3. c. 4.

17. R. c. 6.

Rot. Parl. 42.

Ed. 3 c. 3.

Cook, 2. Inst.

43.

Stamf. pl. cor.

p. 150.

*Fact, if it can; if not, however, let Silence cover it.* 'Tis true, there was a Statute obtained in the 11th of Henry the 7th, in Defiance of the *Great Charter*, which authorized several Exactions contrary to the free Customs of this Realm; particularly in the Case of *Juries*, both selecting and punishing by Justices of Assize and of the Peace, without the fining and Presentment of 12 *Free-men*; *Empson* and *Dudley* were the great Actors of those Oppressions, but they were hang'd for their Pains, and that illegal Statute repealed in the 1st of Henry the 8th c. 6. The Consequence is plain; That Fundamentals give Rule to Acts of Parliament, else why was the Statute of the 8th Edw. 4. c. 2. of *Liveries* and *Information* by the Discretion of the Judges to stand as an Original; and this of the 11th of Henry the 7th repealed as illegal? for, therefore any Thing is unlawful, because it transgresseth a Law: But what Law can an Act of Parliament transgress, but that which is Fundamental? Therefore Tryal by *Juries* or Lawful Judgment of *Equals*, is by Acts of Parliament confest to be a *Fundamental* Part of our Government: And because Chief Justice *Cook* is generally esteem'd a great *Oracle of Law*, I shall in its proper Place present you with his Judgment upon the whole Matter.

5. These Fundamentals are *unalterable* by a *Representative*, which were the Result and Agreement of *English Free-men* individually, the ancients Times not being acquainted with Representatives; for then the Free-men met in their own Persons: In all the *Saxons* Story we find no Mention of any such Thing; for it was the *King, Lords, and Free-men, the Elders and People*; and at the Council of *Winton*, in 855. is reported to have been present, the *Li. Sax. Lam. Great Men of the Kingdom, and an INFINIT MULTI- Concil. Brit. TUDE of other faithful People.* Also that of King *Ina*, the 219. *Ingulph. common Council of the Elders & PEOPLE of the WHOLE Kingdom.* It is not to be doubted but this continued after the *Norman* Times; and that at *Runnymede* by *Stamms* the *Freemen of England* were personally present at the Confirmation of that great Charter, in the Reign of King *John*.  
But

But as the Ages grew more human, with respect to Villains and Retainers, and the Number of Free-men encreased, there was a Necessity for a Representative, especially, since Fundamentals were long ago agreed upon, and those Capital Priviledges put out of the Reach and Power of any little Number of Men to endanger: And so careful were their Representatives in the time of Edward the Third, of Rot. Parl. 13. suffering their Liberties and free Customs to be infring'd, that Ed 3. n. 8. in Matters of extraordinary Weight they would not determine, till they had first return'd and conferr'd with their several Counties or Burroughs that delegated them. fol. 14. n. 34.

### Several Authorities in Confirmation of the Reasons.

So indubitably are these Fundamentals the Peoples Right, and so necessary to be preserved, that Kings have successively known no other safe or legal Passage to their Crown & Dignity, then their solemn Obligation inviolably to maintain them. So sacred were they reputed in the Dayes of Henry the 3d, that not to continue or confirm them, were to affront God, and damn the Souls of his Progenitors and Successors; to Depress the Church, and Deprave the Realm: That the Great Charter comprehensive of them should be allow'd as the common Law of the Land, by all Officers of Justice; that is the lawful Inheritance of all Commoners: That all Statute-Laws or Judgments whatsoever, made in Opposition thereunto, should be null and void: That all the Ministers of State and Officers of the Realm, should constantly be sworn to the Observation thereof: and so deeply did after-Parliaments reverence it, and so careful were they to preserve it, that they both confirm'd it by 32. several Acts, and enacted Copies to be taken and lodg'd in each Cathedral of the Realm, to be read four times a Year publickly before the People; as if they would have them more oblig'd to their Ancestors for redeeming and transmitting those Priviledges, then for begetting them: And that Twice every Year the Bishops, apparel'd in their Pontificals, with Tapers burning, and other Solemnities

Preambl. 9.  
Henr. 3.  
25. Ed. 1. c. 1.  
42. Ed 3. c. 1.  
Rot. Parl. 15.  
Edw. 3. n. 10,  
37.  
Cook, 1. Inst.  
f. 81.  
Cook, 2. Inst.  
f. 525, 526.  
25. Edw. 1.  
c. 3.  
28 Edw. 1.  
c. 1.  
25. Edw. 1.  
should c. 4.



*should pronounce the greater Excommunication against the Infringers of the Great Charter, though it were but in Word or Counsel; for so saith the Statute. I shall for further Satisfaction repeat the Excommunication or Curse pronounced both in the Dayes of Henry the Third, and Edward the First.*

*The Sentence of the Curse given by the Bishops, with the King's Consent, against the Breakers of the Great Charter.*

**I**N the year of our Lord 1253. the third day of May, in the great Hall of the King at *Westminster*, in the Presence, and by the Consent of the Lord *Henry*, by the Grace of God King of *England*, and the Lord *Richard*, Earl of *Cornwall*, his Brother; *Roger Bigot*, Earl of *Norfolk*, Marshal of *England*; *Humphry*, Earl of *Hereford*; *Henry*, Earl of *Oxford*; *John*, Earl Warren; and other Estates of the Realm of *England*; We Boniface, by the Mercy of God, Arch-Bishop of *Canterbury*, Primate of *England*, F. of *London*, H. of *Ely*, S. of *Worcester*, E. of *Lincoln*, W. of *Norwich*, P. of *Hereford*, W. of *Salisbury*, W. of *Durham*, R. of *Excester*, M. of *Carlile*, W. of *Bath*, E. of *Rocheſter*, T. of *St. Davids*, Bishop, apparell'd in Pontificials, with Tapers burning, against the Breakers of the Churches Liberties, and of the Liberties and other Customes of this Realm of *England*, and namely these which are contained in the Charter of the Common Liberties of *England*, and Charter of the *Forreſt*, have denounced Sentence of Excommunication in this Form, By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, &c. of the blessed Apostle *Peter* and *Paul*, and of all Apostles, and of all Martyrs, of blessed *Edw.* King of *England*, and of all the Saints of Heaven, We Excommunicate and Accurse

Accurse, and from the Benefit of our Holy Mother, the Church, we sequester all those that hereafter willingly and maliciously deprive or spoil the Church of her Right; and all those that by any Craft or Willingness, do violate, break, diminish, or change the Churches Liberties, and free Customs contained in the Charters of the Common Liberties, & of the *Forrest*, granted by our Lord the King, to Arch-Bishops, Bishops, and other Prelates of *England*, and likewise to the Earls, Barons, Knights and other Free-holders of the Realm; and all that secretly and openly, by Deed, Word or Counsel do make Statutes, or observe them being made, and that bring in Customs, to keep them, when they be brought in, against the said Liberties, or any of them, & all those that shall presume to judge against them; and all and every such Person before-mention'd, that wittingly shall commit any Thing of the Premises, let them well know that they incur the aforesaid Sentence, *ipso facto*.

*The Sentence of the Clergy against the Breakers of the Articles above-mentioned.*

**I**N the Name of the Father, the Son, and the Holy Ghost, Amen: Whereas our Sovereign Lord the King, to the Honour of God, and of holy Church, and for the common Profit of the Realm, hath granted for him, and his Heirs for ever these Articles above-written, *Robert Arch-Bishop of Canterbury*, Primate of all *England*, admonished all his Province once, twice and thrice, because that Shortness will not suffer so much delay, as to give knowledge to all the People of *England*, of these Presents in writing: We therefore enjoyn all Persons, of what Estate soever they be, that they, and every of them

them, as much as in them is, shall uphold and maintain these Articles granted by our Sovereign Lord the King, in all Points: And all those that in any Point do resist or break, or in any manner hereafter Procure, Counsel, or in any wise Assent to, Testifie or Break those Ordinances, or go about it, by Word or Deed, openly or privily, by any manner of Pretence or Colour; we, the aforesaid Arch-Bishop, by our Authority in this Writing expressed, do Excommunicate and Accurse, and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of Holy Church do sequester and exclude.

We may here see, that in the obscurest Time of *Popery* they were not left without a Sence of Justice; and the *Papists*, whom many think no Friends to Liberty and Property, under dreadful Penalties injoyn an inviolable Observance of this great Charter, by which they are confirm'd. And though I am no *Roman Catholick*, and as little value their other Curses pronounc'd upon Religious Dissents, yet I declare ingenuously, I would not for the World incur this Curse, as every Man deservedly doth, that offers Violence to the Fundamental Freedoms thereby repeated and confirmed: And that any *Church* or *Church Officers* in our Age, should have so little Reverence to *Law*, *Excommunication* or *Curse*, as to be the Men that either vote or countenance such Severities, as bid Defiance to the *Curse*, and rend this memorable *Charter* in pieces, by disseizing *Free men* of *England* of their *Freeholds*, *Liberties* & *Properties*, meerly for the Inoffensive Exercise of their Conscience to God in Matters of Worship, is a Civil sort of *Sacrilege*.

I know it is usually objected, That a great Part of the Charter is spent on the Behalf of the *Roman Church*, and other Things now abolisht; and if one Part of the great Charter may be repeal'd or invalidated, why not the other?

To which I answer; This renders nothing that is *Fundamental* in the Charter the less valuable; for they do not stand upon the Legs of that *Act*, though it was made in Honour of them, but the *Ancient and primitive Institution of the Kingdom*. If the Pe-  
tition



tion of Right were repeal'd, the *great Charter* were never the less in Force, it being not the *Original Establishment*, but a *Declaration and Confirmation* of that Establishment. But those Things that are abrogable or abrogated in the *great Charter*, were never a Part of Fundamentals, but hedg'd in then for present Emergency or Conveniency. Besides, that which I have hitherto maintained to be the Common and Fundamental Law of the Land, is so reputed, and further ratified by the *Petition of Right*, 3 *Car. 1.* which was long since the *Church of Rome* lost her Share in the *Great Charter*. Nor did it relate to Matters of Faith and Worship, but Temporalities only; the Civil Interest or Propriety of the Church. But with what Pretence to Mercy or Justice, can the *Protestant Church* null the *Romish*, that she may retain the *English Part* without conforming to *Rome*, and yet now cancel the *English Part* itself to every free-born *English Man* that will not conform to Her? But no more of this at this Time; only give me leave to remind a Sort of active Men in our Times, that the cruel Infringers of the Peoples Liberties, and Violaters of these Noble Laws, did not escape with bare *Excommunications* and *Curses*; for such was the venerable Esteem our Ancestors had for these great Priviledges, and deep Sollicitude to preserve them from the Defacings of Time, or Usurpation of Power, that King *Alfred* executed 40 Judges for warping from the ancient Laws of the Realm. *Herbert de Burgo*, Chief Justice of *England* in the Time of *Edw. 1.* was sentenced by his Peers in open Parliament for advising the King against the *Great Charter*. Thus *Spencers*, both Father and Son for their *Arbitrary Rule* and *Evil Counsel* to *Edw. 2.* were exiled the Realm. No better Success had the Actions of *Tresilian* & *Belknap*: And as for *Empson* and *Dudley*, though Persons of some Quality in the Time of King *Henry the 7th*, the most ignominious Death of our Country, such as belongs to *Theft* and *Murder*, was scarce Satisfaction enough to the Kingdom for their Illegal Courses. I shall chuse to deliver it in the Words of Chief Justice *Cook*, a Man, whose Learning in Law hath not without Reason obtained a venerable Character of our *English Nation*.

‘ There was (saith he) an Act of Parliament, made in the 11th Year of King *Hen. 7.* which had a fair flattering Preamble, pretending to avoid divers Mischiefs, which were (1st) *To the high Displeasure of Al-*

Almighty God. (2dly) The great Let of the Common Law. And  
 (3dly) The great Let of the Wealth of this Land. And the Purven-  
 'ot that Act, tended in the Execution contrary, EX DIAMETRO,  
 'viz. To the high Displeasure of Almighty God, and the great Let,  
 'nay, the utter Subversion of the Common Law, and the great Let  
 'of the Wealth of this Land; as hereafter shall appear, the Sub-  
 'stance of which Act follows in these Words.

**T**hat from thenceforth, as well Justices of Assize, as Ju-  
 stices of the Peace, in every County, upon Information for  
 the King, before them made, without any Finding or  
 Presentment by Twelve Men, shall have full Power and  
 Authority, by their Discretion; and to hear and determine all  
 Offences, as Riots, unlawful Assemblies, &c. committed and  
 done against any Act or Statute made, and not repeal'd, &c.

'By Pretext of this Law, Empson and Dudley did commit  
 'upon the Subjects insufferable Pressure and Oppressions; and  
 'therefore this Statute was justly, soon after the Decease of Hen. 7.  
 'repealed at the next Parliament, by the Statute of 1 Hen. the 8.  
 'chap. 6.

'A good Caveat to Parliaments to leave all Causes to be measur'd  
 'by the Golden and strait Metwand of the Law, and not to the in-  
 'certain and crooked Cord of Discretion.

'It is almost incredible to foresee, when any Maxim, or Fun-  
 'damental Law of this Realm is altered (as elsewhere hath been ob-  
 'served) what dangerous Inconveniencies do follow; which most  
 'expressly appears by this MOST UNJUST and strange Act of  
 'the 11th of Hen. 7. For hereby not only Empson and Dudley  
 'themselves, but such Justices of Peace (corrupt Men) as they  
 'caused to be authorised, committed most grievous and heavy Op-  
 'pressions & Exactions, grinding the Faces of the poor Subjects by  
 'penal Laws (be they never so obsolete, or unfit for the Time) by  
 'Information only, without any Presentment or Tryal by Jury, be-  
 'ing the ANCIENT BIRTH RIGHT of the Subject; but to hear  
 'and determine the same, by their Discretions, inflicting such Pe-  
 'nalty as the Statute not repealed, imposed. These, and other like  
 Oppressions,

‘Oppressions and Exactions by the Means of *Empson and Dudley*  
 ‘and their Instruments, brought infinite Treasure to the Kings Cof-  
 ‘fers, whereof the King him self, at the End, with GREAT GRIEF  
 ‘and COMPUNCTION REPENTED, as in another Place we  
 ‘have observ’d

‘This Statute of the 11th of *Hen. 7.* we have recited, and  
 ‘shewed the just Inconveniencies thereof; to the End that the like  
 ‘should NEVER hereafter be attempted in any Court of Parlia-  
 ‘ment; and that others might avoid the FEARFUL END of those  
 ‘two Time-Servers, *Empson and Dudley, Qui eorum vestigia insi-*  
 ‘stant, exitus perhorrescant.

I am sure, there is nothing I have offer’d in Defence of *English*  
 Law-Doctrine that riseth higher then the Judgment and Language  
 of this great Man, the Preservation and Publication of whose En-  
 deavours became the Care of a great Parliament. And it is said of  
 no inconsiderable Lawyer, that he should thus express himself in our  
 occasion, viz. *The Laws of England were never the Dictates of any*  
*Conqueror’s Sword; or the Placita of any King of this Nation; or*  
 (saith he) *to speak impartially and freely, the Results of any Parlia-*  
*ment that ever sat in this Land.*

Thus much of the *Nature of English Rights*, and the *Reason and*  
*Justice* of their inviolable Maintenance. I shall now offer some  
 more general Considerations for the Preservation of *Property*, and  
 hint at some of those Mischiefs that follow spoiling it for Consci-  
 ence sake, both to *Prince and People.*

1. The Reason of the *Alteration* of any Law, ought to be the  
 Discommodity of Continuing it; but there can never be so much  
 as the least *Inconveniency* in continuing of *Liberty and Property*;  
 therefore there can be no just Ground for *infringing*, much less *ab-*  
*rogating* the Law that gives and secures them.

2. No Man in these Parts is born *Slave* to another; neither hath  
 one Right to inherit the Sweat of the others Brow, or reap the Benefit  
 of the others Labour, but by Consent; therefore no Man should  
 be deprived of *Property*, unless he injure another Man’s.

3. But certainly, nothing is more unreasonable, then to sacrifice  
 the *Liberty and Property* of any Man (being his *Natural and Civil*  
*Rights*) for *Religion*, where he is not found breaking any Law rela-  
 ting to *Natural & Civil Things.* *Religion*, under any Modification is



no Part of the old *English Government*; *Honeste vivere, alterum non laedere, jus suum cuique tribuere*, are enough to entitle every Native to *English Priviledges*: A Man may be a very good *English Man*, and yet a very indifferent *Church-man*. Nigh 300 Years before *Austine* set his Foot on *English Ground*, had the Inhabitants of this Island a *free Government*. It is Want of distinguishing between *It* and the *Modes* of Religion, which fills every Clamorous Mouth with such Impertinent Cryes as this; *Why do not you submit to the Government?* as if the *English Civil Government* came in with *Luther*, or were to go out with *Calvin*: What Prejudice is it for a *Papish Landlord* to have a *Protestant Tennant*; or a *Presbyterian Tennant* to have a *Protestant Landlord*? Certainly, the *Civil Affairs* of all Governments in the World may be peaceably transacted under the different *Trims of Religion*, where Civil Rights are inviolably observ'd. Nor is there any Interest so inconsistent with *Peace* and *Unity*, as that which dare not solely rely upon the Power of *Perswasion*, but affects *Superiority*, and impatiently seeks after an *Earthly Crown*: This is not to act the *Christian*, but the *Cesar*; not to promote *Property*, but *Party*, and make a *Nation* Drudges to a *Sect*. Be it known to such narrow Spirits, we are a *Free People* by the *Creation* of God, the *Redemption* of Christ, and careful *Provision* of our (never to be forgotten) honourable Ancestors: So that our Claim to these *English Priviledges* rising higher than the Date of *Protestancy*, can never justly be invalidated for any *Non-conformity* to it. This were to loose by the *Reformation*, which God forbid; I am sure 'twas to enjoy *Property* with Conscience that promoted it: Nor is there any better *Definition* of *Protestancy*, then *protesting against Spoiling Property for Conscience*. I must therefore take Leave to say, that I know not how to reconcile what a Great Man lately deliver'd in his *Eloquent Harangue* to the *House of Lords*: His Words are these,

'For when we consider Religion in *Parliament*, we are supposed  
'to consider it as a *Parliament* shou'd do, and as *Parliaments* in  
'all Ages have done, that is, as it is a Part of our Laws, a Part,  
'and a necessary Part of our Government: For as it works upon  
'the Conscience, as it is an INWARD PRINCIPLE of the  
'DIVINE LIFE, by which good Men do govern all their Actions,  
the

the State hath nothing to do with it, it is a Thing which belongs to another kind of Commission, then that by which we sit here.

I acquiesce in the latter Part of this Distinction, taking it to be a venerable Truth, and would to God Mankind would believe it, and live it; but how to agree it with the former, I profess Ignorance; for if the Government hath nothing to do with the Principle it self, what more can she pretend over the Actions of those Men that live that good Life? Certainly, if Religion be this Principle of Divine Life, exerting it self by Holy Living, and that as such, it belongs not to the Commission of our Superiours, I do with Submission conceive, that there is very little else of Religion left for them to have to do with; the rest merits not the Name of Religion, and less doth such a Formality deserve Persecution. I hope such Circumstances are no necessary Part of English Government, that cannot reasonably be reputed a necessary part of Religion; and I dare believe, that he is too great a Lawyer, upon second Thoughts, to repute that a Part of our Laws, a Part & a necessary Part of our Government, that is such a Part of Religion, as is neither the Divine Principle, nor yet the Actions immediatly flowing from it, since the Government was most compleat and prosperous many Ages without it, and hath never known more perplex, Contests and troublesom Interruptions, then since it hath been receiv'd and valu'd as a Part of the English Government; and God, I hope, will forbid it in the Hearts of our Superiours, that English Men should be deprived of their Civil Inheritance, for their Non-conformity to Church-Formality: For no Property out of the Church; the plain English of publick Severity, is a Maxim that belongs not to the holy Law of God, or Common Law of the Land.

4. If Liberty and Property must be the Forfeir of Conscience for Non-conformity to the Princes Religion, the Prince and his Religion shall only be lov'd as the next best Accession to other Mens Estates, and the Prince perpetually provoakt to expose many of his Inoffensive People to Beggary.

5. It is our Superiours Interest, that Property be preserved, because it is their own Case: None have more Property then themselves; But if Property be expos'd for Religion, the Civil Magistrate exposes both his Conscience and his Property to the Church, and disarms himself of all Defence upon any Alteration of Judg-



ment. This is for the *Prince* to fall down at the *Prelate's* Foot, and the *State* to suffer it self to be rid by the *Church*.

6. It obstructs all *Improvement* of Land and Trade; for who will labour that hath no *Propriety*, or hath it exposed to an unreasonable Sort of Men for the bare Exercise of his Conscience to God; and a poor Country can never make a Rich and Powerful Prince. *Heaven* is therefore *Heaven* to good and wise Men, because they have an *Eternal Propriety* therein.

7thly, This sort of Procedure hitherto oppugn'd on the behalf of *Property*, puts the whole Nation upon miserable *Uncertainties* that are follow'd with great *Disquiet* and *Distractions*, which certainly it is the Interest of all Governments to prevent. The Reigns of *Henry 8.* *Edw. 6.* *Q. Mary* and *Q. Eliz.* both with relation to the *Marriages* of the first, and the *Religious Revolutions* of the rest, are a plain Proof in the Case.

King *Henry* voids the *Pope's Supremacy*, and assumes it himself. *Q. Mary*, his Daughter by his first Wife *Katharine*, repeals all those *Acts* made since the 12th of *Hen. 8.* in Disfavour of the *Pope*; Oaths taken on both sides to maintain those Laws. *Edw. 6.* enacts *Protestancy* with an Oath to maintain it. *Q. Mary*, c. 1. This is abrogated; *Papery* solemnly restored, and an Oath inforc'd to defend it. Comes *Q. Elizabeth* and repeals that Law, calls back *Protestancy*, ordains a new Oath, to his Oath *Q. Mary's* Oath, and all this under the Penalty of losing *Estate*, *Liberty*, and sometimes *Life* it self; which Thousands to avoid, lamentably perjur'd themselves four or five times over, within the space of 20. Years: in which *Sin* the *Clergy* transcended, not an *Hundred* for every *Thousand* but left their *Principles* for their *Parishes*. Thus hath *Conscience* been debauch't by *Force*, and *Property* toss'd up and down by the impetuous Blasts of *ignorant Zeal*, or *sinister Design*.

7. Where *Liberty* and *Property* are violated, there must alwayes be a State of *Force*: And (though I pray God that we never need those Cruel Remedies, whose Calamitous Effects we have so lately felt) yet certainly, *Self-Preservation* is of all Things deare st to Men, insomuch, that being conscious to themselves of not having done an ill Thing, to defend their *unforfeited Privileges* they cheerfully hazard all they have in this World; so strangely vindictive are the Sons of Men in Maintenance of their *Rights*: And such are the Cares, Fears, Doubts and Insecurities of



of that Administration, as renders Empire a *Slavery*, and Dominion the worst Sort of *Bondage*: on the contrary, nothing can give greater Cheerfulness, Confidence, Security and Honour to any Prince, then ruling by Law; for it is both a Conjunction of *Title* with *Power*, and attracts *Love*, as well as it requires *Duty*.

Give me Leave without any Offence, for I have God's Evidence in my own Conscience, I intend nothing but a respectful Caution to my Superiours, to confirm this Reason with the Judgment and Example of other Times. The Governour of the *Eleans* held a strict Hand over the People, they being in Despair, called in the *Spartans* for Relief, and by their Help Freed all their Cities from the sharp Bondage of their Natural Lords.

The State of *Sparta* was grown powerful, and oppress'd the *Thebans*, they, though but a weak People, yet whetted by Despair, and the Prospect of greater Miseries by the *Athenians*, deliver'd themselves from the *Spartan* Yoke.

Nor is there any other considerable Reason given for the Ruin of the *Carthaginian* State, then Avarice and Severity. More of this is to be found in Sr. W. Ræigh's History of the World, l. 3. who hath this witty Expression in the same Story, l. 5. of a severe Conduct, *When a forced Government, saith he, shall decay in Strength, it will suffer, as did the old Lyon, for the Oppression done in his Youth, being pinch'd by the Wolf, goar'd by the Bull, and kick'd also by the Ass.*

This lost *Caesar Borgia*, his new and great Conquests in *Italy*: No better Success attended the severe Hand held over the People of *Naples* by *Alphonso* and *Ferdinand*. 'Twas the undue Severity of the *Sicilian* Governours, that made the *Syracusians*, *Leontines* and *Messenians* so easie a Conquest to the *Romans*. An harsh Answer to a petitioning People lost *Rehoboam* ten Tribes. On the contrary, in *Livy*, Dec. 1. l. 3. we find, that *Perilia*, a City of the *Brutians* in *Italy*, chose rather to endure all Extremity of War from *Hannibal*, then upon any Condition to desert the *Romans*, who had govern'd them moderately, and by that gentle Conduct procur'd their *Love*, even then, when the *Romans* sent them Word, they were not able to relieve them, and wisht them to provide for their own Safety.

N. Machiavel in his Discourses upon *Livy*, p. 542. tells us, that

that one Act of *Humanity* was of more Force with the Conquer'd *Falisci*, then many violent Acts of *Hostility*; which makes good that Saying of Seneca, *Mitius imperanti melius paretur*, They are best obeyed, that govern most mildly.

9. And lastly, If these ancient *Fundamental Laws* so agreeable with *Nature*, so suited to the Disposition of our *Nation*, so often defended with *Blood and Treasure*, so carefully and frequently ratified, shall not be to our great Pilots, as Stars or Compass for them to steer the Vessel of this Kingdom by, or *Limits* to their *Legislation*; no Man can tell how long he shall be *secure of his Coat*, enjoy his *House*, have *Bread* to give his *Children*, *Liberty* to work for *Bread*, and *Life* to eat it: Truly, this is to justify what we condemn in *Roman-Catholiks*. It is one of our main *Objections*, that their *Church* assumes a *Power* of assuring *People* what is *Religion*, thereby denying *Men* the *Liberty* of walking by the *Rules* of their own *Reason*, or *Precepts of Holy Writ*. To which we oppose both: We say, the *Church* is tyed to act nothing contrary to *Reason*; and that *Holy Writ* is the declared *fundamental Law* of *Heaven* to maintain, and not to usurp upon which, *Power* is given to the true *Church*. Now let us apply this *Argument* to our *Civil Affairs*, and it will certainly end in a reasonable *Limitation* of our *Legislators*, that they should not impose that upon our *Understandings*, which is inconsistent with them to embrace; nor offer any the least *Violation* upon the *Fundamental Law* of the *Land*, from whence they derive their *Power* to prosper such Attempts: Do the *Romanists* say, *Believe as the Church believes*; Do not the *Protestants*, and which is harder, *Legislators* say so too? Do we say to the *Romanists*, at this rate, *Your Obedience is blind*, and your *Ignorance is the Mother of Devotion*; Is it not also true of our selves? Do we object to them; *This makes your Religion fluid as the Rivers, one Thing to Day, and another to morrow, any Thing the Church saith or doth*? Both not our own *Case* submit us to the like *Variation* in *Civils*? Have we not long told them, that under pretence of obeying the *Church*, and not controlling her *Power*, she hath raised a *Superstructure* inconsistent with that *Foundation* she pretends to build upon? And are not we the *Men in Civils*, that make our grand *Priviledges* to depend upon *Men*, not *Laws*, as she doth upon *Councils*, not *Scripture*? If this be not *Popery* in *Temporals*, what is?

It



It is humbly beseecht of those *Superiours*, that it would please them to consider what *Reflection* such Severity justly brings upon their Proceedings; and remember, that in their ancient *Delegations*, it was not to define, resolve, and impose *Matters* of Religion, and sacrifice *Civil Priviledges* for it; but, to maintain the *Peoples Properties*, according to the ancient *Fundamental Laws of the Land*, and to superadd such *Statutes* only, as were consistent with, and preservative of those *Fundamental Laws*.

To conclude this Head; My plain and honest Drift has all along been neither more nor less then this, to show that *Church-Government* is no real Part of the old *English-Government*; and to disintangle *Property* from *Opinion*; the untoward Knot the *Clergy* for several Ages have tyed; the which, it is not only the *Peoples Right*, but our *Superiours Interest* to undo: for it gauls both *People* and *Prince*: For, where *Property* is subjected to *Opinion*, the *Church* interposes, and makes something else requisite to enjoy *Property*, then belongs to the Nature of *Property*; and the Reason of our *Possession* is not our *Right* by & *Obedience* to the *common Law*, but *Conformity to Church Law*; a Thing dangerous to *Civil Government*: for 'tis an Alteration of old *English Tenure*, a suffering the *Church* to trip up & supplant the *State*, and a making *People* to owe their *Protection* not to the *Civil*, but *Ecclesiastical Authority*: For let the *Church* be my *Friend*, and all is well; make her my *Foe*, and I am made her *Prey*; Let *Magna Charta* say what she will for me, my *Horses*, *Cows*, *Sheep*, *Corn*, *Goods* go first, my *Person* to *Goal* next; and here's some *Church Trophys* made at the Conquest of a peaceable *Dissenter*: This is that anxious Thing; May our *Superiours* please to weigh it in the Equal Scale of *Doing as they would be done by*. Let those *Common Laws* that fix and preserve *Property* be the Rule and Standard. Make *English Mens Rights* as inviolable as *English Church Rights*. Disintangle and distinguish them; And let not Men sustain *Civil Punishments* for *Ecclesiastical Faults*, but for *Sins* against the ancient, establish'd *Civil Government* only, that the *Natures of Acts* and *Rewards* may not be confounded; so shall the *Civil Magistrate* preserve *Law*, secure his *Civil Dignity* & *Empire*, and make himself *Belov'd* of *English Men*, whose Cry is, and the Cry of whose *Laws* hath ever been, *Property more sacred then Opinion*, *Civil Right not concern'd with Ecclesiastical Discipline*; nor forfeitable for *Religious Non-conformity*.  
But



But though an inviolable Preservation of *English Rights* of all things best secureth to our *Superiours* the Love and Allegiance of the People; yet there is something further, that with Submission I offer to their serious Consideration, which in the second place concerns their *Interest*, and the *Peoples Felicity*; and that is their *Discord* about *Religion*, notwithstanding their unanimous Cry for *Pro-perty*, a prudent Mannagement of which may turn to the great Quiet, Honour and Profit of the Kingdom.

## II. Our SUPERIOURS governing themselves upon a BALLANCE, as near as may be, towards the several Religious INTERESTS.

TO perform my part in this Point, I shall not at this time make it my Business to manifest the *Inconsistency* that there is between the *Christian Religion*, and a *forced Uniformity*; not only because it hath been so often and excellently done by Men of Wit, Learning and Conscience, and that I have else-where largely deliver'd my Sense about it; but because *Every free and impartial Temper* hath of a long time observ'd, that such *Barbarous Attempts* were so far from being indulg'd, that they were most severely prohibited by Christ himself, who instructed his Disciples, to love their Enemies, not to persecute their Friends for every Difference in Opinion; That the Tares should grow with the Wheat; That his Kingdom is not of this World; That Faith is the Gift of God; That the Will and Understanding of Man are Faculties not to be workt upon by Corporal Penalties; That TRUTH is allsufficient to her own Relief; That ERROR and ANGER go together; That base Coyn only stands in need of Imposition to make it current, but that True Metal passeth for its own intrinsick Value; with a great deal more of that Nature: I shall therefore chuse to oppose my self at this time to any such Severity upon meer Prudence; that such as have No Religion, and certainly They that persecute for Religion, have as little as need to be, may be induc'd to Tolerate THEM that have.

First,

First, However advisable it may be in the Judgment of some wise Men, to prevent, even by Force, the arising of any *New Opinions*, where a Kingdom is universally of another Mind; especially if it be odious to the People, and inconsistent with the Interest of the Government; it cannot be so, where a Kingdom is of *many Minds*, unless some One Party have the Wisdom, Wealth, Number, Sober Life, Industry and Resolution of it; side, which I am sure is not to be found in *England*; so that the Wind hath plainly shifted its Corner, and consequently obliges to another Course; I mean, *England's* Circumstances are greatly changed, and they require *new Expedients* and other sorts of *Applications*. Physicians vary their Medicines according to the Revolution and Commixture of Distempers. They that seek to tie the Government to obsolete and inadequate Methods (supposing them once apt, which Cruelty in this Case never was) are not Friends to its Interest, whatever they may be to their own. If our *Superiours* should make it their Business so to prefer *One Party*, as to depress the rest, they insecure themselves by making them Friends to be their Enemies, who before were one anothers. To be sure it createth *Haird* between the Party advanced, and those depressed; *Jacob's* preferring *Joseph*, put his Brethren upon that Conspiracy against him. I will allow that they may have a more particular Favour for the National Religion (if they can think she deserves it) then for any other Perswasion, but not more then for all other Parties in *England*; that would break the *Ballance*, the keeping up of which will be, to make every Party to owe its Tranquillity to their Prudence and Goodness, which will never fail of Returns of Love and Loyalty; for since we see each Interest looks jealously upon the other, 'tis reasonable to believe, they had rather the Dominion should lodge where it is, while universally *impartial* in their Judgment, then to trust it with any one sort of themselves. Many inquisitive Men into humane Affairs, have thought, that the Concord of Discords hath not been the infirmest Basis Government can rise or stand upon: It hath been observed, that less Sedition and Disturbance attended *Hannibal's* Army, that

B

consisted



consisted of many Nations, then the *Roman* Legions, that were of one People; It is Marvelous, how the Wisdom of that General secured them to his Designs: *Livy* saith, 'that his Army for 'Thirteen Years, that they roaved up and down the *Roman* Empire, made up of many Countries, divers Languages, Laws, 'Customs, Religions, under all their Successes of War and 'Peace, never Mutined: *Malvetzy* as well as *Livy* ascribes it to that Variety, well mannaged by the General. By the like Prudence *Jovianus* and *Theodosius Magnus* brought Tranquillity to their Empire, after much Rage and Blood for Religion. In Nature we also see, all Heat consumes, all Cold kills; that three Degrees of Cold, to two of Heat, allay the Heat; but introduce the Contrary Quality, and over-cool by a Degree; but two Degrees of Cold to two of Heat, make a Poyz in Elements, and a Ballance in Nature. The like in Families: It is not probable, that a Master should have his Work so well done, at least with that Love and Respect, who continually smiles upon one Servant, and severely frowns upon all the rest; on the contrary, 'tis apt to raise Feud amongst Servants, and turn Duty into Revenge, at least Contempt. In fine: It is to make our *Superiours* Dominion less then God made it; and to blind their Eyes, stop their Ears and shut up their Breasts from beholding the Miseries, hearing the Cries and redressing the Grievances of a vast number of People, under their Charge, vext in this World for their Belief and inoffensive Practice about the next.

Secondly, It is the Interest of Governours to be put upon no Thankless Offices, that is, to blow no Coales in their own Country (especially when it is to consume their People, and it may be, themselves too) not to be the Cat's Foot, not to make Work for themselves, or fill their own Hands with Trouble, or the Kingdom with Complaints: It is to forbid them the Use of Clemency, wherein they ought most of all to imitate God Almighty, whose Mercy is above all his Works; and renders them a sort of Exortioners to the People, the most remote from the End and Goodness of their Office. In short; It is the best Receipt that their Enemies can give, to make them uneasy to the Country.

Thirdly



*Thirdly*, It not only makes them Enemies, but there is no such Excitement to Revenge, as a rapid Conscience: He that hath been forc'd to break his Peace, to gratifie the Humor of another, must have a great share of Mercy and Self-denial to forgive that Injury, and forbid himself the Pleasure of Retribution upon the Authors of it: For Revenge, in other Cases condemnable of all, is here lookt upon by too many to be the next way to their Expiation. To be sure, whether the Grounds of their Dissent be rational in themselves, such Severity is unjustifiable with them; for this is a *Maxim* with Sufferers, Whoever is in the Wrong, the Persecutor is never in the Right. Men, not conscious to themselves of Evil, and harshly treated, not only resent it unkindly, but are bold to shew it.

*Fourthly*, Suppose the Prince, by his Severity, conquers any into a Compliance, he can upon no prudent Ground assure himself of their Fidelity, whom he hath taught to be Treacherous to their own Convictions. Wise Men rarely confide in those whom they have debauch't from Trust, to serve themselves: At best it resembleth but forc'd Marriages, that seldom prove happy to the Parties. In short: Force makes Hypocrites; 'tis Persuasion only that makes Converts.

*Fifthly*, This Partiality, of sacrificing the Liberty and Property of all Dissenters, to the Promotion of a single Party, as it is the lively Representation of J. Calvin's *Horrendum Decretum* of Predestination; so the Consequences of the one belong unto the other, it being but that Ill-natured Principle, *practised*; Men are put upon the same desperate Courses, either to have no Conscience at all, or to be Hang'd for having a Conscience not fashionable; for, let them be Virtuous, let them be Vitious, if they fall not in with *that Mode* of Religion, they must be reprobated to all Civil and Ecclesiastical Intents and Purposes. Strange! that men must either Deny their Faith and Reason, or be destroyed for acting according to them, be they otherwise never so Peaceable. What Power is this? But that men are to be protected upon Favour, not Right or Merit; and that no Merit out of the *English Church-Dress* should find Acceptance, is

severe. That Father we justly blame, that narrows his Paternal Love to some one of his Children, though the rest be not one jot less Virtuous then the Favouriter: Such Injustice can never flow from a Soul acted by Reason; but a Mind govern'd by Fancy, and enslaved to Passions.

*Sixthly*, consider *Peace*, *Plenty* and *Safety*, the three grand Inducements to any Country to honour the Prince, and love the Government, and the best Allurements to Forreigners to trade with it, and transport themselves to it, are utterly lost by such Intestine Jars; for instead of Peace, Love and good Neighbourhood, behold Animosity and Contest! One Neighbour watcheth another, and makes him an Offender for his Conscience; this divides them, their Families and Acquaintance: Perhaps with them, the Towns and Villages where they live, most commonly the *Sufferer* hath the *Pity*, and the *Persecutor* the *Odium* of the Multitude; and when People see Cruelty practised upon their Inoffensive Neighbours by a Troublesom Sort of Men, and those countenanced by a Law, it breedeth Ill Blood against the Government. Certainly, *haling People to Goals, breaking open their Houses, seizing of their Estates*, and that without all Proportion, leaving Wives without their Husbands, and Children without their Fathers, their Families, Relations, Friends and Neighbours under Amaze and Trouble, is almost as far from the Peace of a well-govern'd Kingdom, as it is from the Meekness of *Christianity*.

*Plenty* will be hereby exchanged for *Poverty*, by the Destruction of many *Thousand Families* within this Realm, who are greatly Instrumental for the carrying on of the most *Substantial Commerce* therein, Men of *Virtue*, good *Contrivance*, great *Industry*, whose Labours not only keep the Parishes from the *Trouble & Charge* of maintaining them and theirs, but help to maintain the *Poor* and are great *Contributors* to the *Kings Revenue* by their Traffick: This very Severity will make more *Bankrupts* in the Kingdom of *England* in 7 Years then have been in it upon all other Accounts in 7 Ages; which *Consequence*, how far it may consist with the Credit & Interest of the Government, I leave to better Judgments.

This Sort of great Severity that hath been lately, and still is used amongst us, is like to prove a great Check to that Readiness, which

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otherwise we find in Forreigners to trade with the Inhabitants of this Kingdom; for if Men cannot call any Thing their own under a different Exercise of Conscience from the National Way of Religion, may their Correspondents prudently say, We will not further concern our selves with Men that stand upon such tickling Terms; what know we but such Persons are ruin'd in their Estates by Reason of their Non-Conformity, before such Time as we are reimburs'd for Money paid, or Goods delivered: Nay, we know not how soon those who are Conformists may be Non-Conformists, or what Revolution of Councils may happen, since the Fundamental Laws, so jealous of the Peoples Property, are so little set by with some of their own Magistrates; for though we are told of very worthy and excellent Laws for the Security of the Peoples Rights, yet we are also told, that they all hang at the Churches Ear; and no Church-Conformity, no Property, which is, no Church-Man, no English-Man; so that in Effect the Rights of their Country depend upon the Rights of their Church; and those Churches are so numerous, and have taken their Turns so often, that a Body knows not how to manage one's self securely to one's own Affairs in a Correspondence with any of them: For in King Henry the eighth's Dayes Popery was the only Orthodox Religion, and Luther, Melancton, Oecolampadius, Calvin, &c. were great Hereticks: In Edward the sixth's Time, they were Saints, and Popery, Idolatry: A few Years after Q. Mary makes the Papists Holy Church, and Protestantcy Heresie: About six Years compleats her Time, and Q. Elizabeth enters her Reign, in which Protestants are good Christians, and the Church of Rome the Whore of Babylon: In her Reign, and King James's, and Charles the first's, sprung the Puritans, who divided themselves into Presbyterians and Independents; the Bishops exclaimed against them for Schismatics, and they against the Bishops for Papistical and Anti christian. In the long Parliament's Time the Presbyterian drives out the Bishop; O. Cromwel defeating them, and sending the Presbyterian to keep Company with the Bishop, confers it mostly upon the Independent and Anabaptist, who kept it through the other Fractions of Government, till the Presbyter and Bishop got it from them; and the Bishop now from the Presbyter; but how long it will rest there, who knows. It seems to me, that this is not a new Notion, my Supposition idle or improbable, unless Moderation take



take Place of Severity, and Property the room of Punishment of Opinion; for that must be the lasting Security, as well as that it is the Fundamental Right of *English People*.

There is also a further Consideration, and that is, the rendering just and very good Debts desperate, both at home and abroad, By giving Opportunity to the Debtors of Dissenters to detain their Dues: Indeed it seems a natural Consequence with all but Men of Mercy and Integrity, *What should we pay them for, may they say, that are not in a Capacity to demand or receive it; at least to compel us?* Nay, they may plead a sort of Kindness to their Creditors, and say, *We had as good keep it; for if we pay it them, they will soon lose it; 'tis better to remain with us, then that they should be pillag'd of it by Informers;* though Beggary and Want should in the mean time overtake the right Owners and their Families. Nor is it unworthy of the most deliberate Thoughts of our Superiours, that the Land already swarms with Beggars, and that there is no so ready Course to encrease their Number, as the severe Prosecution of Dissenters; so that though they immediately Suffer, the Kingdom in the End must be the Loser: For besides a Decay of Trade, &c. this driving away of Flocks of Sheep, and Herds of Cattel, seizing of Barns full of Corn, breaking open of Doors and Chests, taking away the best Goods those Instruments of Cruelty can find, sometimes All, even, to a Bed, a Blanket, wearing Apparel, and the very Tools of Trade, by which People honestly labour to get their Bread, till they leave Men, Women and Children destitute of Subsistence, will necessitate an extreme Advance of the Poores Rate in every Parish of England, or they must be Starv'd. Oh that it would please them that are in Authority to put a Stop to this Inhuman Usage, lest the Vengeance of the Just God break forth further against this poor Land.

Safety, another Requisite to an happy Government, must needs be at an End, where the Course oppos'd is followed: And it is but some prudent Forreigners proclaiming Liberty of Conscience within their Territories, and a Door is opened for a Million of People to pass out of their Native Soil, which is not so extremely improved, that it should not want two or three hundred thousand Families more then it hath, to advance it, especially at this Time of Day, when our Forreign Islands yearly take off so many necessary

fary Inhabitants from us : And as of Contraries there is the same Reason ; so let the Government of *England* but give that prudent Invitation to Forreigners, and she maketh her self Mistress of the Arts and Manufactures of *Europe* : Nothing else hath hindred *Holland* from truckling under the *Spanish* Monarchy, and being ruin'd above threescore Years ago, and given her that Rise to Wealth and Glory.

Seaventhly, Nor is this Severity only Injurious to the Affairs of *England*, but the whole *Protestant* World : For besides that it calls the Sincerity of their Proceedings against the *Papists* into Question, it furnisheth them with this sort of unanswerable Interrogatory : 'The Protestants exclaim against us for Persecutors, and are they now the very men themselves ? Was Severity an Instance of Weakness in our Religion, and is it become a valid Argument in theirs ? Are not our Actions (once void of all Excuse with them) now defended by their own Practice ? But if men must be restrained upon prudential Considerations from the Exercise of their Consciences in *England*, why not the same in *France* and *Germany*, where matters of State may equally be pleaded ? Certainly whatever Shifts *Protestants* may use to palliate these Proceedings, they are thus far condemnable upon the Foot of Prudence.

Eightly, Such Procedure is a great Reflection upon the Justice of the Government, in that it enacts Penalties inadequate to the Fault committed, viz. That I should loose my Liberty and Property, Natural Endowments, and confirmed Civil Priviledges, for some Error in Judgment about Matters of Religion ; as if I must not be a Man, because I am not such a sort of religious Man as the Government would have me, but must loose my Claim to all Natural Benefits, though I harmonize with them in Civil Affairs, because I fall not in with the Judgment of the Government in some Points of a supernatural Import ; though no real Part of the ancient Government. Perhaps instead of going to the Left Hand, I go to the Right : and whereas I am commanded to hear *A. B.* I rather chuse to hear *C. D.* my Reason for it, being the more Religious Influence the latter hath over me, then the former ; and that I find by Experience, I am better affected, and more Religiously edified to  
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*Good Living.* What *Blemish* is this to the Government? What *Insecurity* to the Civil Magistrate? Why may not this Man Sell, Buy, Plow, pay his Rent, be as good a Subject, and as true an *English-man*, as any *Conformist* in the Kingdom? Howbeit, *Fines* and *Goals* are very ill Arguments to convince *sober Mens Understandings*, and dissuade them from the Continuance of so harmless a Practice.

Lastly, But there is yet another Inconveniency that will attend this Sort of Severity, that so naturally follows upon our Superiors making *Conformity* to the Doctrine and Worship of the Church of England, the *sine qua non*, or Inlet to all Property, and Ground of Claim to all *English* Civil Priviledges, to wit, that they make a Rod, for ought they know, to whip their own Posterity with; since it is Impossible for them to secure their Children to the *English* Church; and if it happen that any of them are never so conscientiously of another Perswasion, they are lyable to all the Miseries that may attend the Execution of those Laws: Such a King must not be King; such *Lords* and *Commons* must not sit in Parliament; nay, they must not administer any Office, be it never so inferiour, within the Realm, and they never so virtuous and capable; their very *Patrimony* becomes a Prey to a Pack of lewd *Informers*, and their Persons exposed to the Abuse of Men, Poor or Malicious.

But there are three *Objections* that some make against what I have urged, not unfit to be consider'd. The first is this: If the *Liberty* desired be granted, what know we but *Dissenters* may employ their Meetings to insinuate against the Government, inflame People into a Dislike of their Superiours, and thereby prepare them for Mischief.

Ans. This *Objection* may have some Force, so long as our Superiours continue Severity; because it doth not only sharpen and excite *Dissenters*, but it runs many of them into such Holes and Corners, that if they were disposed to any such *Conspiracies*, they have the securest Places and Opportunities to effect their Design. But what *Dissenter* can be so destitute of Reason and Love to common Safety, as to expose himself and Family, by plotting



ting against a Government that is kind to him, and gives him the Liberty he desires, and could only be supposed in common sense to plot for. To be sure, *Liberty to Worship God*, according to their several Professions, will be, as the Peoples Satisfaction, so the Governments greatest Security; For if men enjoy their *Property* and their *Conscience*, which is the noblest part of it, without Molestation, what should they object against and plot for? Mad Men only burn their own Houses, kill their own Children, & murder themselves. Doth *Kindness* or *Cruelty* most take with men that are but themselves? *H. Grotius* with *Campanella*, well observ'd, that a *fierce and rugged Hand* was very improper for Northern Countries. English-men are gain'd with *Mildness*, but inflamed by *Severity*: And many that do not suffer, are as apt to compassionate them that do. And if it will please our Superiours to make Tryal of such an *Indulgence*, doubtless they will find *Peace* and *Plenty* to ensue. The Practice of other Nations, and the Trade, Tranquillity, Power and Opulency that have attended it, is a Demonstration in the Case, and ought not to be slighted by them that aim at as high and honourable things for their Country: And if we had no other Instance then our own *Intervals of Connivance*, they were enough to satisfy reasonable men, how much more *Moderation* contributes to publick Good, then the Prosecution of People for their Religious Dissent; since the one hath ever produced *Trade* and *Tranquillity*; the other, greater *Poverty* and *Dissension*.

The second Objection, and by far the more weighty, runs thus:

Obj. *The King and Parliament are sworn to maintain and protect the Church of England, as establisht, &c. therefore to tolerate other Opinions, is against their Oath.*

Ans. Were the Consequence true, as it is extreamly false, it were highly unreasonable to expect Impossibilities at their Hands. Kings and Parliaments can no more make *Brick* without *Straw*, then *Captives*: They have not sworn to do things beyond their Ability. Had it been in His and their Time and Choice, when the *Church of England* had been first disturbed with dissenting Opinions, it might have reflected more colourably a kind of Neglect upon them: But since the *Church of England* was no  
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sooner a Church, then she found some sort of *Dissenters*; and that the utmost Policy and Severity of *Q. Elizabeth*, *King James*, and *King Charles the 1st*, were not successful towards an absolute Uniformity; Why should it reflect upon them, that the *Church of England* hath not yet rid her self of Dissenting Parties? Besides, it is Notorious, that the late Wars gave that Opportunity to Differing Perswasions to spread, that it was utterly impossible for them to hinder, much less during the several Years of the King's Exile, at what time the present Parliament was no Parliament, nor the generality of the Members of it scarce of any Authority. Let it be considered, that 'twas the Study of the Age to make People *Anti-Papistical* and *Anti-Episcopal*, and that Power and Preferment went on that side: Their Circumstances therefore and their Ancestors are not the same; They find the Kingdom Divided into several Interests, and it seems a Difficulty insurmountable to reduce them to any one Perswasion; wherefore to render themselves Masters of their Affections, they must necessarily govern themselves towards them on a *Ballance*, as before express; otherwise, they are put upon the greatest Hazards, and extreamest Difficulties to themselves and the Kingdom, and all to perform the Uncharitable Office of suppressing many Thousands of Inoffensive Inhabitants for the different Exercise of their Conscience to God: This is not to make them resemble Almighty God, the Goodness of whose Nature extends it self universally, thus to narrow his Bowels, and confine his Clemency to one single Party of Men: It ought to be remembered, that *Optimus* went before *Maximus* of old, and that Power without Goodness is a frightful Sort of a Thing.

But Secondly, I deny the Consequence, viz. That the King is therefore obliged to persecute *Dissenters*, because he or the Parliament hath taken an Oath to maintain the Church of England: For it cannot be supposed or intended, that by maintaining Her, they are to destroy the Rest of the Inhabitants: Is it impossible to protect her without knocking all the rest on the Head? Do they allow any to Supplant her Officers, Invade her Livings, Possess her Emoluments, Exercise her Authority? What would she have? Is she not Church of England still, in the same Regency, invested with the same Power, bearing the same Character? What Grandeur or Interest

*Interest hath she lost by them? Are they not manifestly her Protector? Is she not National Church still? And are not the greatest Offices, Civil, Military and Maritime conferr'd upon her Sons? And can any of her Children be so insensible as either to challenge her Superiours with Want of Integrity, because they had not performed Impossibilities? or to excite them to that Harshness, which is not only destructive of many Thousands of Inhabitants, but altogether injurious to their own Interest, and dishonourable to a Protestant Church? Suppose Dissenters not to be of the visible Church, are they therefore unfit to live? Did the Jews treat Strangers so severely that had so much more to say then her self? Is not the King Lord of Wastes and Commons as well as Inclosures? Suppose God hath elected some to Salvation, doth it therefore follow he hath reprobated all the rest? And because he was God of the Jews, was he not therefore God of the Gentiles? or were not the Gentiles his People, because the Jews were his peculiar People? To be brief; They have answer'd their Obligation, consented to severē Laws, and commanded their Execution, in that they have still preferr'd her above Every Interest in England, to render her more Powerful and Universal, till they have good Reason to be tired with the Lamentable Consequences of those Endeavours, and to conclude, that the Uniformity thereby intended, is a thing Impracticable.*

And I wonder that these men should so easily forget that great Saying of King CHARLES the 1st (whom they pretended so often and with so much Honour to remember) in his Advice to the present King: where he saith,

*Beware, of Exasperating any Factions, by the Crossness and Asperity of some Mens Passions, Humours, or Private Opinions, imployed by You, grounded only upon their Differences in Lesser Matters, which are but the Skirts and Suburbs of Religion,*



(●)  
*wherein a Charitable Connivance and Christian Toleration often Dissipates their Strength, whom Rougher Opposition Fortifieth, and puts the Despised and Oppressed Party into such Combinations as may most Enable them to get a Full Revenge upon Those they count their Persecutors; who are commonly Assisted with that Vulgar Commiseration, which attends all that are said to Suffer under the Common Notion of Religion.*

So that we have not only the King's Circumstances, but his Father's Counsel, who saw not the End of one half of them defending a Charitable Connivance, and Christian Toleration of Dissenters.

Obj. 3. But it may be further alledged, *This makes way for Popery or Presbytery to undermine the Church of England, and mount the Chair of Power and Preferment, which is more then a Prudential Indulgence of Different Opinions.*

And yet there is not any so probable an expedient to vanish those Fears, and prevent any such Design, as keeping all Interests upon the Ballance; for so the Protestant makes at least six Parties against Popery, and the Church of England at least five against Presbytery; and how either of them should be able to turn the Scale against five or six, as free and thriving Interests as either of them can pretend to be, I confess I cannot understand: But if one only Interest must be tolerated, which  
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implies a Resolution to suppress the Rest, plain it is, that the Church of England ventures her single Party against six growing Interests, and thereby gives *Presbytery* and *Papery* by far an easier Access to Supremacy, especially the latter, for that it is the Religion of those Parts of *Europ*, which neither want Inclination, nor Ability to prosper it. So that besides the Consistency of such an Indulgence with the Nature of a *Christian-Church*, there can be nothing more in Prudence advisable for the Church of *England*, then to allow of the *Ballance* propounded; in that first, no Person of any real Worth will ever the sooner decline her; on the contrary, it will give her a greater Reputation in a Country so hating Severity: and next, it gives her Opportunity to turn the Scale against any one Party that may aspire after her Power and Indowments: And she never need to fear the Agreement of all of them to any such Design, *Episcopacy* not being more intolerable then *Presbytery* in Power, even to an *Independency* itself; and yet between them lies the narrowest Difference that is among the Dissenting Interests in this Kingdom.

But this seems too large, and yielding; and therefore to find a *Medium*, something that may compass the happy End of good Correspondence & Tranquillity, at least so to fortifie the Church of *England*, as that she may securely give Law to all other Religious Interests, a *Comprehension* is pitcht upon, and diligently pursued by both *Episcopalians* and *Presbyterians*, at least some of each Party.

But if it becomes wise men to Look before they Leap, it will not be unadvisable for them to weigh the *Consequences* of such an Endeavour: For, in the first place, there is no one People I know in *England*, that stands at a greater Distance from her Doctrine as it is maintain'd by her present Sons, then the *Presbyterians*, particularly about *absolute Reprobation*, the *Person of Christ*, *Satisfaction* and *Justification*; and he must be a Stranger in the *Religious Contests* of our times that knows not this.

In the next place, None have govern'd themselves with a plainer Denial and more peremptory Contempt of *Episcopacy*, and the whole Discipline and Worship of the Church of *England*, then the *Presbyterians* have ever done; let them put me to prove it, if they please, even of their most reverend Fathers.

ably, Who knows not that their reciprocal *Heats* about these very things, went a great way towards our late lamentable Troubles? Now if the same *Principles* remain with each Party, and that they are so far from repenting of their Tenaciousness, that on the contrary they justify their Opposition to one another in these matters, how can either Party have *Faith* enough to rely upon each other's Kindness, or so much as attempt a *Comprehension*? What must become of the Labours of Bp. *Wiggit*, R. *Hooker*, Bp. *Banckroft*, Bp. *Lawd*, &c. in Rebuke of the *Presbyterian Separation*; and the Names of those leading Dissenters, as *Cartwright*, *Dodd*, *Bradshaw*, *Rutterford*, *Galaspee*, &c. so famous among the present *Presbyterians*, and that for their Opposition to the Church? This consider'd, what Reason can any render, why the *Episcopalians* should so singularly Provide for, and Confide in an Interest that hath already been so *Destructive* to theirs? On the other hand, With what Prudence may the *Presbyterians* imbrace the others Offer that intended it not in Kindness to them, and who they must needs think, cannot but ow Revenge, and retain deep Grudges for old Stories?

But 4thly, The very Reason given for a *Comprehension* is the greatest that can be urged against it; namely, *The Suppression of other dissenting Perswasions*. I will suppose a *Comprehension* and the Consequences of it, to be an *Eradication* of ALL Interests; the Thing desired: But if the two remaining Parties shall fall out, as it is not likely that they will long agree, what can the *Presbyterian* have to Ballance himself against the Ruling Power of *Episcopacy*? or the *Episcopalian* to secure himself against the Aspirings of *Presbytery*? They must either all become *Episcopalians*, or *Presbyterians*, else they will commix as *Iron* and *Clay*, which made ill *Leggs* for the Image in *Daniel*; Nor, is it to be thought, that their *Leggs* should stand any better.

But some are ready to say, that Their Difference is very minute. Grant it; Are they ever the more tolerable for that? Certainly, *Forbearance* should carry some Proportion with the Greatness of the Difference, by how much it is easier to comply in smaler matters: He that dissents *fundamentally*, is more excusable then those that sacrifice the Peace and Concord of a Society about little *Circumstances*; for there cannot be the same Inducement to suspect men of



of *Obstinacy in an Essential as Circumstantial Non-Conformity.*

Besides, How far can this Accommodation extend with *Security* to the *Church of England*? Or, on what better Terms will the *Presbyterians* conform to her Discipline and formal Acts of Devotion, then those upon which *Peter du Moulin* offer'd to preach the Gospel at *Rome*? viz. That if the Pope would give him Leave to preach at *Rome*, he would be contented to preach in a Fool's Coat. I question if the *Presbyterian* can go so far, I am sure he could not; and as sure, that *Peter du Moulin* hop't by preaching there in a Fool's Coat, to inculcate that Doctrine which should un-Mitre the Pope, and alter his Church, the very Thing the *Church of England* ought to fear: For *Peter du Moulin* intended to preach in a Fool's Coat no longer, but till he had preacht the People wise enough to throw it off again. So the *Presbyterians*, they may conform to certain Ceremonies (once as sinful to them, as a Fool's Coat could be ridiculous to *Peter du Moulin*) that they may the better introduce their Alterations both in Doctrine and Discipline.

But that which ought to go a great Way with our Superiours in their Judgment of this Matter, is not only the Benefit of a Ballance against the Presumption of any one Party, and the Probability, if not Certainty of their never being overdriven by any one Perswasion whilst they have others to more then poiz against the growing Power of it; but the Conceit it self, if not altogether impracticable, is at least very difficult to the Promotors, and an Office as thankless from the Parties concern'd. This appears in the Endeavours used for a Comprehension of *Arrians* and *Homonians* under one Orthodoxy, related not only in our common Ecclesiastical History, but more amply in the Writings of *Hilary*, an Enemy to the *Arrians*, and *Mariana's Spanish History*. These publick Tests, or comprehensive Creeds were many, *Nice*, *Ariminum*, *Sirminium*, &c. in order to agree both Parties, that neither might stigmatize the other with the odious Crime of *Heresie*; but the Consequence of all this Convocation and prolix Debate was, that neither Party could be satisfied, each continuing their former Sentiments, and so grew up into stronger Fractions, to the Division, Distraction, and almost Destruction of the whole Empire; recover'd a little by the prudent Moderation of *Jovianus*, and much improved, not by

a *Comprehension*, but *Restoration of a Seasonable Liberty of Conscience* by *Theodosius Magnus*.

Also in *Germany* about the Time of the Reformation, nothing seemed more sincere then the Design of Union between the *Lutherans* and *Zuinglians*: For *Luther* and *Zuinglius* themselves by the earnest Endeavours of the *Landgrave of Hessen*, came together; but the Success was so small, notwithstanding the *Grave's* Mediation, that they parted scarcely Civil; To be sure, as far from Unity as Controversie is. *Luther* & *Cardinal Cajetan* met for a Composure of the Breach betwixt the *Protestants* and the *Pope*; but they were too wide for those Conferences to reconcile, no *Comprehension* could do the Business. A second Essay to the same Purpose was by *Melancthon*, *Cassander* & others; the Consequence of it was, that the Parties were displeased, and the Heads suspected, if not hated of their Followers: Nor had *Bucer's* Meeting with *Julius Pflugg* any better Success. And how fruitless their Contrivances have been, that with greatest Art and Industry have of a long Time endeavoured a Reconciliation of *Lutherans* and *Calvinists*, is well known to those that are acquainted with the Affairs of *Germany*; and such as are not, may furnish themselves from those publick Relations given by those that are employed about that Accommodation; where besides a dull and heavy Progress, the Reader may be a Witness of their Complaint, not only that both Parties are too tenacious, but that they suffer Detraction for their good Endeavours, each Side grudging every Tittle they yield, and murmuring as if they were too hardly born upon. And if Persons so disinterested, and worthy in their Attempts have had no better Issue, I cannot see how those who seem compell'd by Worldly Interest more then Conscience to seek and propagate a *Comprehension*, especially, when it determines in the Persecution of the rejected Perswasions, can with any Reason expect from God or Good Men any better Success to their Design.

Lastly, there is nothing any Man toucht with Justice and Mercy, can alledge for a *Comprehension*, that may not be much better urg'd to procure a *Toleration*; they are Men as well as those of other Perswasions, their Faith is as *Christian*, they believe as sincerely, live as conscientiously, are as useful in the Kingdom, and mannage their Dissent

Dissent with as much Modesty & Prudence, the Church of England her self being in a great Measure Judge, as those on whose Account a *Comprehension* may be intended: To be sure they are *English Men*, and have an Equal Claim to the Civil Rights of their Native Country, with any that live in it, whom to persecute, whilest others, and those no better Men, are tolerated, is, as I have already said, *The Unreasonable and Unmerciful Doctrine of absolute Election and Re- probation put in Practice.*

### III. A SINCERE PROMOTION of General & Practical RELIGION.

I am now come to the last, which to be sure, is not the least Part of my Answer to the Question propounded, viz. *The Sincere Promotion of general and practical Religion*, by which I mean the *Ten Commandments*, or moral Law, and *Christ's Sermon upon the Mount*, with other Heavenly Sayings, excellently improved, and earnestly recommended by several Passages in the Writings of his Disciples, which forbid *Evil*, not only in *Deed*, but *Thought*; and in-joyn *Purity & Holiness*, as without which no Man, be his Pretences what they will, shall ever see God. In short, General, True and Requisite Religion in the Apostle James's Definition is, *To visit the Widow and the Fatherless, and to keep our selves, through the Universal Grace, unsported of the World*: This is, as the most sacred, so the most easie & probable way to fetch in all Men professing God & Religion; for that every Perswasion acknowledges this in Words, be their Lives never so incongruous with their Confession; And this being the *Unum necessarium*, that One Thing only requisite to make Men happy here and hereafter, why should Men sacrifice their Accord in this great Point for an Unity in minute or circumstantial Things, that perhaps inobtainable, and if it were not, would signifie little or nothing, either to the Good of Human Society, or the particular Comfort of any individual in that World which is to come? No one Thing is more senseless and condemnable among Men, then their Uncharitable & Mutinous Clamours and Contests about Religion, indeed about Words & Phrases, whilst they all verbanly meet



in the most, if not only necessary Part of *Christian Religion*: For nothing is more certain, then if Men would but live up to one half of what they know in their own Consciences they ought to practise, their Edge would be taken off, their Blood would be sweetned by Mercy and Truth, and this unnatural Sharpness qualified; they would quickly find Work enough at home; each Man's Hands would be full by the Unruliness of his own Passions, and in Subjection of his own Will; and instead of devouring one another's *Good Name, Liberty, or Estate, Compassion* would rise, and mutual *Desires* to be assitent to one another in a better Sort of Living. Oh how decent, how delightful would it be, to see Mankind (the Creation of one God, that hath upheld them, to this Day) of one Accord, at least in the weighty Things of God's *practical Law*! 'Tis Want of *Practice*, and too much *Prate*, that hath made Way for all the *Incharity* and *Ill living* that is in the World. No Matter what Men say, if the Devil keep the House: Let the *Grace of God, the Principle of Divine Life* (as a great Man lately call'd it in his Speech) but be heartily and reverently entertained of men, that teaches to *deny Ungadliness, and converse Soberly, Righteously and Godlily in this present evil World*; and it is not to be doubted but *Tranquillity*, and a very *amicable Correspondence* will follow. Men are not to be reputed *Good* by their *Opinion*; nor is that, nor ought it to be offensive to the Government; but *Practice* is what must *save or damn*, temporally or eternally. Christ in his Representation of the Great Day, doth not tell us that it shall be *Well SAID*, or *Well TALKT*, but *Well DONE* good and faithful *Servant*: neither is the *Depart from me YOU*, directed to any but the *Workers of Iniquity*. Error now is brought from the Signification of an *Evil Life* to an *unsound Proposition*, as *Philosophy* is from *Mortification*, and well-living to an *Unintelligible Way of Wrangling*. And a man is more bitterly harrac'd for an *Erroneous Proposition*, though the Party holding it thinks not so, and the Party charging it denies all *Infallible Judgment* in this World (so that it may as well be true as false for all him) then for the *most dissolute Life*. And truly it is *high Time*, that Men should give *better Testimony* of their *Christianity*; for *Cruelty* hath no Share in *Christ's Religion*, and *Coercion* upon Conscience is utterly inconsistent with the very *Nature of his Kingdom*: He rebuked that Zeal, which would have

have Fire from Heaven to devour *Dissenters*, though it came from his own Disciples; and forbad them to *pluck up the Tares*, though none had a more gentle or infallible Hand to do it by: He prefer'd *Mercy* before *Sacrifice*, and therefore we may well believe, that the Unmerciful Sacrifices some Men now offer, I mean, *Imprisoning Persons, spoiling of Goods, and leaving whole Families destitute of common Subsistence*, are far from being grateful to him, who therefore came into the World, and preach't that Heavenly Doctrine of *Forbearing, and Loving of Enemies*, and laid down his most *Innocent Life* for us, whilst we were Rebels, that by such peaceable Precepts and so patient an Example the World might be prevail'd upon to leave those Barbarous Courses: And doubtless, very lamentable will their Condition be, who at the Coming of the great Lord shall be found Beaters of their *Fellow Servants*. In vain do Men go to Church, pray, preach, and style themselves *Believers, Christians, Children of God, &c.* whilst such Acts of Severity are practis'd, and any Disposition to molest harmless Neighbours for their Conscience, so much as *courtenc'd*. A Course quite repugnant to Christ's Doctrine and Example

In short; the promoting of this *General Religion* by a severe *Reprehension and Punishment of Vice, and Encouragement of Virtue*, is the *Interest of our Superiours* several Ways.

1. In that it meets with, and takes in all the Religious Perswasions of the Kingdom; *Penal Laws for Religion is a Church with a Sting in her Tail*; take that out, and there is no Fear of the Peoples Love and Duty: And what better Obligation or Security can the Civil Magistrate desire? Every Man owns the *Text*; 'tis the *Comment* that's disputed: Let it but please him to make the *Text* only sacred and necessary, and so leave Men to keep Company with their own Meanings and Consequences, and he not only prudently takes in all, but suppresseth nice Searches, fixes Unity upon Materials, quiets present Differences about Things of lesser Moment, retrieves Humanity and *Christian Clemency*, and fills the Kingdom with Love and Respect to their Governours.

2. Next, A Promotion of general Religion, it being in it self practical, brings back again ancient *Virtue*: Good Living will thrive in this Soil; Men will grow Honest, Trusty and Temperate; we may expect good Neighbourhood and Cordial Friendship; one

may depend more upon a *Word* then now upon an *Oath*. How lamentable is it to see People afraid of one another; Men made and provided for of one God, and that must be judged by that one Eternal God, yet full of Diffidence in what each other sayes, and most commonly interpret as People read *Hebrew*, all Things that are spoken backward.

3. The *third* Benefit is, that Men will be more *industrious*; more diligent in their lawful Callings, which will encrease our Manufacture, set the Idle and Poor to work for their Livelyhood, and enable the several Countries with more Ease and Decency to maintain the Aged and Impotent among them. Nor will this only make the *Lazy conscientiously industrious*, but the *Industrious and Conscientious Man Chearful* at his Labour, when he is assured to keep what he *Works* for, and that the *Sweat of his Brows* shall not be made a *Forfeit* for his *Conscience*.

4. It will render the Magistrates Province more facil, and Government a safe as well as easie Thing; for as *Tacitus* sayes of *Agricola's* instructing the *Brittains* in Arts and Sciences, and using them with more Humanity then other Governours had done, that it made them fitter for Government: So if that practical Religion, and the Laws made to maintain it, were duely regarded, the very Natures of Men now wild and froward by Cross and Jealous Interests, would learn *Moderation*, and see it to be by far their greatest Interest to pursue sober and amicable Conversation, which would rid the Magistrate of much of his present Trouble: And the Truth is, 'tis a Piece of Slavery to have the Regiment of Ignorants and Ruffains; but there is true Glory and Royalty in having the Government of Men instructed in the Justice and Prudence of their own Laws and Country.

Lastly, Heaven will prosper so natural, so noble, and so *Christian an Essay*, which ought not to be the least Consideration with a good Magistrate; and the rather, because the Neglect of this practical Religion hath been the Ruin of Kingdoms and Common Wealths among *Heathens, Jews and Christians*. This laid *Tarquin* low, and his Race never rose more. How puissant was *Lacedamon* and *Athens* in *Greece*, till *Luxury* had eaten out their *Severity*, and a *pompous Living*, contrary to their Excellent Laws, render'd their Execution intolerable? And was not *Hannibal's*

Army



Army a Prey to their own Idleness and Pleasure, which by effeminating their Natures conquer'd them, when the whole Power of *Rome* could not do it? What else betray'd *Rome* to *Cesar's* Ambition; and made way for the after Rents and Divisions of the Empire? The Conquest and Inheritance of a well govern'd People for several Ages, as long as their Manners lasted. The *Jews* in like Manner were prosperous while they kept the Statutes and Judgments of their God; but when they became rebellious and dissolute, the Almighty either visited them from Heaven, or exposed them to the Fury of their Neighbours. Nothing else sent *Zedekiah* to *Babylon*, and gave him and the people a Prey to *Nebuchadnezzar* and his Army.

*Neglect of Laws and dissolute Living*, Andrew Horn (that lived in the Time of *Edw. the 1st*, as before cited) tells us, was the Cause of their miserable Thralldom and Desolation the Britains sustained by Invaders and Conquerors. And pray, what else hath been the English of our sweeping Pestilence and dreadful Fires of late Years? Hundreds of Examples might be brought in this Case; but their Frequency shall excuse me.

Thus have I honestly and plainly clear'd my Conscience for my Country, and answer'd, I hope, modestly, and though briefly, yet fully the Import of the Question propounded, with Honour to the Magistrate, and Safety to the People by an happy Conjunction of their Interests. I shall conclude,

That as greater Honour and Wisdom cannot well be attributed to any Sort of Men, then for our Superiours, under their Circumstances, to be sought to by all Perswasions, confided in by all Perswasions, and obey'd by all Perswasions; and to make those Perswasions know, that it is their Interest so to do, as well as that it is the Interest of our Superiours, they should, which the Expedients proposed naturally tend to; So, for a further Inducement to embrace them, let it be constantly remembred, that the Interest of our English Governours is like to stand longer upon the Leggs of the English People, then of the English Church; since the one takes in the Strength of all Interests,

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*the other leaves out all but her own; and it may happen that the English Church may fail, or go travail again, but it is not probable that English People should do either, while Property is preserved, a Ballance kept, General Religion propagated, and the World continues.*

May all this prevail with our Superiours to make the best Use of their little Time, remembering in the midst of all their Power and Grandeur that they carry Mortality about them, and are equally liable to the Scrutiny and Judgment of the last Day with the poorest Peasant, and that they have a great Stewardship to account for; that Moderation and Virtue being their Course, they for the future shall steer, after having faithfully discharg'd that Grand Trust reposed in them by God and this Free-People, they may with Comfort to their Souls, and Honour to their Names and Actions, safely anchor in the Haven of Eternal Blessedness: So prays with much Sincerity,

*An English-Christian-Man,*

*William Penn.*

## A Corollary.

**T**HAT the People are under a great *Dissatisfaction*.  
That the Way to *quiet Differences*, and render contrary  
*Interests subservient* to the Interest of the Government, is,

First, *To maintain inviolably the Rights of it, viz. Liberty and Property, Legislation and Juries, without Neglect. That slighting and Infringing them hath been the Injury of Prince and People, and early or late the Ruin of the Contrivers of so ill Designs; and when all has been done, the only Expedient has been, to come back again to English Law: This takes in all, pleases all, because it secures and profits all; sacrificing Priviledges for the sake of Conformity, makes a Breach upon the Civil Government, alienates the Peoples Affections from their Prince, lodges Property in the Church, so as none can come at it, but through Obedience to her Rites; for she at this Rate has the keeping of it, a Thing Unknown, as well as Unsafe to the Ancient English Government.*

2dly, *That the Prince govern himself upon a Ballance towards all Religious Interests; that this best poizes Parties to his Security, renders him Master of an universal Affection, and makes him truly and safely Prince of all his Country; but the contrary Course narrows his Justice and Mercy, makes the Government to shine but upon one Patch of the Kingdom; to be Just but to one Party, and disinheris the rest from their Birth-right; that this Course ends in great Disadvantage to the Peace, Plenty and Safety of Prince and People.*

**E**

3dly,



3dly, And lastly, Instead of being Uncharitable, Severe and Cruel for Modifications, let them sleep, and General and Practical Religion be promoted, that which receives an Amen in every Man's Conscience, from the Principle of Divine Life (as the Lord Keeper well call'd it) in every Breast: That all agree in the most weighty Doctrines; and that nothing will sooner sweeten Mens Blood, and mollifie their Natures, then employing that Time and Pains they bestow on fruitless Contests, in Living up to what they both Know, Believe and Accord in; that this leaves Men to keep Company with their own Comments, and makes the Text only Sacred, and Holy Living necessary, not only to Heavenly, but Earthly Places, I mean, Preferments, whence Virtue becomes the Door to Favour, and Conscience (now smothered in the Crowd of Sinister Interests) the Noble Rule of Living.

God Almighty, if it please him, beget Noble Resolutions in the Hearts of our Superiours to use these plain & safe Expedients, that Charity may supplant Cruelty, Contest yield to Good Life, and present Distances meet in a Just and Kind Neighbourhood.

Great and Honourable is that Prince, Free and Happy that People, where these Things take Place.

W. P.

#### ERRATA.

Page 6. l. 30. read and may. p. 12. r. Rege. Marg. r. Plus. f. 162. r. 126. f. 19. r. 350. p. 14. l. 13 r. above. l. 14. r. 100. Marg. r. 975. p. 17. l. 21 f gain'd r restor'd. p. 21. l. 20. r. never so. p. 23. l. 20. r. there. p. 35. l. 16 r. Rites. pag 44. l. 30. r. Sirnium. l. 35. r. Factions. p. 47. l. 29. r. perhaps it. p. 51. l. 15. of the.